

By Mr. Downing:

Q. Will you identify what Government Exhibit 74 is?

A. Government Exhibit 74 is a list of goods not received in the trailer.

Mr. Callaghan: I move that that be stricken out, if Your Honor please.

282 Your Honor just sustained the objection to a similar question.

The Court: Why don't you bring the other out first?

The answer is stricken.

Mr. Downing: All right.

By Mr. Downing:

Q. With respect to Government Exhibit 77, marked for identification, I will ask you what that document represents.

A. That represents the white sheet of the number of cases received—of not received in trailer 1652.

Q. With respect to Government Exhibit 75, I will ask you what that document represents.

A. That also represents a part of our work sheet of the number of cases received and not received.

Q. And with respect to Government Exhibit 74.

A. 74 is a list of goods not received.

Q. That is based upon your checking records which you had available at that time, is that right?

A. Yes, sir.

Q. Now, with respect to Government Exhibit 76, marked for identification, what relationship, if any, does that have to Government Exhibits 74, 75 and 77?

283 A. That is a list of cases that should have been brought—

Mr. Callaghan: I object to that.

The Court: What did you say?

The Witness: That is a list of cases that should have been brought in for Brulatour.

Mr. Downing: Brulatour.

Mr. Callaghan: Should have been.

Mr. Downing: Should have been.

The Witness: That is part of this Kodak Company.

Mr. Callaghan: If Your Honor please, may I be heard very briefly on that? If they have got a shipping ticket or a bill of lading—

The Court: Where is the record against which they checked?

Mr. Downing: He has the details. This is the record

against which he checked, Your Honor, 76 on this particular type of film; Government Exhibit 76 is what he used.

The Court: Now, that is a record of what was placed in that truck in Rochester?

Mr. Downing: Yes, sir.

That is what Mr. Vayo identified.

284 The Court: That went in there?

Mr. Downing: That went in there, yes, sir, as a part of the shipment.

The Court: It speaks for itself.

The objection is well taken. He is stating a conclusion.

Whether it is not there or not, he can state what was found there, and you also have the list which Mr. Vayo has identified as to what they put in there in Rochester. Of course, the conclusion is that what he did not find there is true. But if he stated what wasn't there, that invades the province of the jury. That is the basis of your objection?

Mr. Callaghan: Yes.

The Court: Let him state what he found on the truck, and you can use his record to do it with.

By Mr. Downing:

Q. Directing your attention to Government Exhibit 76, did you find those cartons that are identified in that exhibit in the truck at that time?

A. No, sir.

Q. And are those—

Mr. Callaghan: Well, he has done the same thing 285 over again.

Mr. Downing: That is a proper question.

The Court: Now, who is going to talk? If you all three talk, I can't hear any one of you.

Mr. Walsh: I should like to object to this form of examination on this basis: Counsel apparently is attempting to show by this man what arrived at the Eastman Kodak Company.

Now, obviously, the man can testify as to what he saw, and not what he could not see.

The Court: He has made a list of it.

Mr. Downing: That is right, Judge.

Mr. Walsh: That is right.

If he has prepared some memorandum from which he can give his testimony, that is all right.

But this document is simply a recapitulation of a conclusion that he has drawn, and counsel is laying a foundation on that.

Mr. Downing: I don't think that there is anything about a conclusion there. He found certain quantities—

The Court: Let him testify.

The conclusion that he did not find what wasn't 286 there is inescapable, anyway.

But I think the objection is well taken, that for him to present a recapitulation more or less invades the province of the jury.

You may put into evidence what was loaded into the truck, the list of the articles that was loaded into the truck in Rochester. This makes up the list of articles that he found when he unloaded the truck in Chicago. A comparison of the two reveals to the jury what was missing.

If you want to go beyond your recapitulation in assuming, that is argument for him to go on and state that that is what was missing.

I will sustain the objection.

Mr. Downing: At the present time there is no detailed list.

Mr. Vayo had a lot of cards; they are a lot of I.B.M. cards, International Business Machines cards, which go to make up the detail, as evidenced by this bill of lading and as evidenced by the waybill.

The Court: Did he use those?

287 Mr. Downing: He used the cards. He used the cards to make up this list, what was put in there and what was received.

The Court: And he has from the same cards made up a list as to what was put in the truck in Rochester?

Mr. Downing: Yes, what was in the truck in Rochester.

The Court: What was in the truck when he unloaded it in Chicago?

Mr. Downing: That is right, Your Honor.

The Court: Very good.

Mr. Downing: But the document that he has there represents the fact that by type and volume of what was not in the load when he received it; in other words, based upon what he found in the load, and based upon his figures.

The Court: Yes. It is to that, that I sustain the objection.

Mr. Downing: After all, this man is the only man who made the check, and there are no other records unless we

are to bring in what are called Fan-fold cards, or International Business Machines cards, that anybody could sit down and compare what was received and what was not in the shipment. He has done the work.

The Court: He has made up that list from those cards? And that is what he has done?

Mr. Downing: Yes.

The Court: No. I am permitting you to go into what was put into the load or in the truck in Rochester and what was taken out of the truck in Chicago.

Mr. Downing: Yes, sir.

The Court: I am not permitting you to make up a list and give to the jury his conclusion.

But he says, here is another list, and by comparing that with another list, that can be deduced by him as well as by you or I. That is the basis of his objection. I mean, that is well taken. You make a negative point of proof here.

Mr. Downing: As I point out to Your Honor—

The Court: The jury understands that it was put in the truck in Rochester and it is not in the truck when it arrived, and it is unloaded in Chicago, it must have been—

Mr. Downing: I am merely—

289 The Court: —lost or got out of there somewhere between the two destinations.

Mr. Downing: I don't want to argue with Your Honor.

But the reasons that I have stressed this point is this: Because under the accounting system of the Eastman Kodak Company, the only lists that are available, other than these groups of cards, which are International Business Machines punch cards, are these lists which this man has.

The Court: And I am permitting the two lists to go in. Now, he has taken those lists from those cards?

Mr. Downing: That is right, plus what he checked.

The Court: It is the third list that I am not permitting.

I think it is clear.

290 By Mr. Downing:

Q: With respect to Government Exhibit 77, marked for identification, will you explain to the Court and jury what the figures on the left-hand column represent?

A. That is the number of cases of the different kinds of goods that should have been in the trailer.

Mr. Walsh: I object to that as being a conclusion.

The Court: No, that may be stricken. If it is what was shown on the bill of lading, or what was loaded in Rochester, let him state that.

By Mr. Downing:

Q. This is the number of cases, according to your records, which were included in the shipment made from Rochester to Eastman Kodak in Chicago?

Mr. Walsh: I object to that unless he shows what record he is relying upon to show it was loaded.

The Court: Overruled. He may answer.

By Mr. Downing:

Q. And do you have the details that support the quantity and type of film, in court?

A. Yes, I have.

Mr. Callaghan: I object to that as calling for a 291 conclusion as to whether he has something that supports something.

The Court: Overruled.

By Mr. Downing:

Q. With respect to the figures on the right-hand side after each item, I ask you what those figures represent.

A. Those are the number of cases we received.

Q. That applies to each of the types, is that correct?

A. Yes, sir.

Q. With respect to the second item from the bottom, Brulatour, the quantity to the left, what does that represent?

Mr. Callaghan: If Your Honor please, we are getting into the same thing again. He is going to give an answer that is going to be objectionable.

The Court: No; he is not, but he is meeting the grounds of your objection.

Overruled.

Mr. Walsh: If Your Honor please, this document, as I understand it, that he is consulting now, is not a record originally, or kept in the course of the company's 292 business. It is a calculation made by him from—

The Court: He has testified it is, that it is his compilation from the other record, made by him, as to the load in Rochester.

Overruled.

By Mr. Downing:

Q. What was the item represented with Brulatour?

A. 39 cases for Brulatour.

Q. With respect to the quantity at the right-hand side?

A. We received 33 cases.

Q. With respect to the cases listed in Government Exhibit 76, I ask you if those are the six cases that were not received by your company.

A. Those are the six cases that were not received.

Mr. Walsh: I object to that.

The Court: Sustained.

By Mr. Downing:

Q. What relationship did those six cases bear to the entry on Government Exhibit 77?

A. Those are the six cases that were stored—

Mr. Callaghan: The same objection.

The Court: The same ruling. It may be stricken.

298 By Mr. Downing:

Q. Directing your attention to Government's Exhibit 76, marked for identification, I ask you from your record was that film, as described therein, loaded in the trailer 1652 in Rochester?

A. Was it loaded?

Q. Yes.

A. That I couldn't say. It was supposed to be in that trailer.

Mr. Callaghan: I move it be stricken.

The Court: It may be stricken.

By Mr. Downing:

Q. According to your information, was there a quantity of film received by you at the time you checked in this load?

A. No.

Q. I show you government's exhibit 1 marked for identification, and ask you to look at that, and also government's exhibits 2, 3, 4, 5 and 65, marked for identification, and I ask you to look at those and I ask you if those cartons were included in the group of cartons received by you in connection with the shipment as evidenced by Government's exhibits.

A. They should have been in the trailer.

Mr. Walsh: I object to that.

The Court: It may be stricken.

By Mr. Downing:

Q. Were they received by you at the time you received the contents of that trailer?

A. No, sir.

Q. With respect to those cartons, or those cases, are those cartons included and listed on government's exhibit 76?

A. Yes, sir.

Mr. Downing: At this time, if your Honor please, the government would like to offer in evidence, Government's exhibits 72, 75, 76, and 77.

The Court: You have taken off that other one?

Mr. Downing: Yes.

The Court: Would you like to cross examine before I rule?

299 Mr. Callaghan: Yes, I would like to cross examine on it.

Cross Examination

By Mr. Callaghan:

Q. Mr. Hawken, Government's exhibit 75 is exclusively in your handwriting, is it not?

A. Yes, sir.

Q. Does the hand of anybody else appear thereon?

A. No, sir.

Q. When did you make that document?

A. On the morning of July 11th.

Q. 1950?

A. 1950.

Q. At your desk?

A. Yes, sir.

Q. Where is your desk with reference to the loading platform?

A. In the Receiving platform, where all of the freight is unloaded.

Q. Where, with reference to the loading platform, is it? Inside of the building?

A. Inside the building.

Q. Were you outside of the building that morning?

A. Yes, sir.

300 Q. When did you last see that document known as Government's exhibit 75, excluding the time you have seen it in court? When, prior to the time you appeared here in court?

A. I would say on Monday, I believe, of this week.

Q. Monday of this week?

A. Yes, sir.

Q. Where?

A. In Mr. Downing's office.

Q. On the 4th floor of this building?

A. Yes, sir.

Q. When, prior to that time, had you seen it?

A. It was in our files in the Eastman Kodak Company--

Q. When?

A. Oh, some time back in September, I believe, of last year, when I took those documents--

Q. In September, 1950?

A. 1950, yes. I wouldn't be sure about that date, because it was the time we went to Detroit.

Q. Then when you were in Mr. Downing's office on Monday of this week, you added some figures to this document, didn't you?

A. No, sir.

301 Q. At no time?

A. No, sir.

Q. All of the figures made were made at the same time?

A. Yes, sir.

Q. On July 11th?

A. On July 11th.

Q. When did you last see these cartons, excluding the time here in court now that Mr. Downing has asked you to look at Government's exhibits 1 to 5, inclusive, and government's exhibit 62?

A. Did I see the cartons?

302 Q. When did you last see the cartons?

A. I saw some of those cartons at Detroit.

Q. You later saw them prior to your appearing on this witness stand at Mr. Downing's office?

A. No, sir, I haven't seen these cartons.

Q. You never saw those cartons in Mr. Downing's office?

A. In Chicago, no, sir.

Q. Sir?

A. No, sir.

Q. And the first time you ever saw those cartons, you say, was in Detroit?

A. In Detroit, yes, sir.

Q. Was that the first time you ever saw them, was in Detroit?

A. Yes, sir.

Q. When did you first see the document which has been identified here as Government Exhibit 76?

A. The morning of July 11th; when they came to me in the mail.

Q. And someone handed them to you at your desk?

A. Yes, sir.

Q. Handed them—you mean it?

A. I got these from the mail, through the mail assistant.

303 Q. Now, when did you first see the document marked here as Government Exhibit 77?

A. I made that up, Sir, from those records.

Q. Is that all exclusively in your handwriting?

A. Yes, sir.

Q. When did you make that, Mr. Hawken?

A. Either—I don't know. I am not quite sure. It might have been the morning before, or on the 10th. It was whenever we received the mail from Rochester. We receive the mail before the shipments come in.

Q. Did you make the document before the trailer or after the trailer got over to your establishment?

A. Before.

Mr. Callaghan: That is all.

The Court: Mr. Walsh?

Mr. Walsh: Yes.

Cross Examination

By Mr. Walsh:

Q. Now, did you examine this trailer when it arrived?

A. Yes, sir.

Q. How many doors have you got?

A. Two doors, rear-door and a side door.

Q. Well, one rear and one side door?

304 A. Yes, sir.

Q. Was either door open when you saw the trailer?

A. The doors were not open. The seals were not on there, Sir.

Q. So you mean there were no seals on there?

A. That's right, Sir.

Q. You never saw any seals on the trailer?

A. No, sir.

Q. In connection with this load?

A. No, sir.

Q. Now, this Government Exhibit 75, is that a record that you make up regularly in the course of your business, every time that a load comes in?

A. No, sir.

Q. That is just a blank sheet of paper with some lines on it, with no form number or anything else on it?

A. No, sir.

Q. It contained some figures that you put on it, and some words?

A. That's right.

Q. And Government Exhibit 76, that is a record that is regularly made and kept in the course of your business?

A. Yes, sir, that was sent me from Rochester, yes, sir.

Q. Now, how about Government Exhibit 77? Do you make one of those up for every trailer?

A. Every trailer, yes, sir.

Q. And you make this up from information sent to you from Rochester?

A. Yes, sir.

Q. Now, do you have the documents which you used in making them up?

A. That's right, Sir.

Q. Let's see those.

A. (Indicating).

Q. Now, did you receive these documents that have been handed me in this envelope?

A. By mail, Sir.

Mr. Downing: Let the record indicate that he is referring to a group of documents handed to Mr. Walsh by Mr. Hawken.

The Court: The record may so show.

Mr. Walsh: Will you mark this as Defendants' Exhibit 4 for identification?

(Document so marked.)

By Mr. Walsh:

Q. Contained in that envelope, do those slips indicate separate orders?

A. Yes, sir, separate orders. You mean from Rochester? Yes, sir.

Q. Now, where is Brulatour's office?

A. Their office was in Chicago, Sir.

Q. At that time?

A. Yes, sir, at that time.

Q. Where, in Chicago?

A. At 1727 Indiana Avenue.

Q. That is your building?

A. Yes, sir.

Q. And did you handle this shipping, as well as Eastman's?

A. Yes, sir.

Q. Well, is the Brulatour a corporation?

A. It is part of Eastman Kodak Company, Sir.

Q. Oh, it is a subsidiary of Eastman Kodak?

A. Yes, sir.

Mr. Downing: I object, Your Honor. I don't think it is material.

The Court: Yes, sustained.

By Mr. Walsh:

Q. Now, how many cases of film did you receive for Brulatour in this shipment?

A. It was three, Sir.

Q. That you got on the truck?

307 A. Yes, sir..

Q. And what did you do with that film?

A. That was delivered to Brulatour, Sir.

Q. It was sent to Brulatour?

A. Yes, sir. I mean delivered to them on their fourth floor storeroom.

Q. And did it remain there, to the best of your knowledge?

A. Until they sold it, Sir, yes, sir.

Q. Until they sold it?

A. That's right, Sir.

Q. And did they sell it?

Mr. Downing: Objection, your Honor. This man wouldn't know.

The Court: Yes, sustained.

308 Mr. Callaghan: We would like to look at these documents, if your Honor please, from which he has drawn some calculations or conclusions. I don't want to take the time of the Court and jury to do it now or during court time. I am willing to do it on recess time.

The Court: Well, have you all of the documents there now?

The Witness: Yes, sir.

By Mr. Walsh:

Q. These are all of the documents from which you made the calculations on the other sheets?

A. That's right.

Q. By "these" are you referring to defendant's exhibit 4?

A. Yes, sir.

The Court: All right; if you have to look it over during the noon hour, I will be glad to let you do that.

May we have this witness back for cross examination at 2?

Mr. Downing: Yes.

The Court: Finish what other items you have now and why don't you check them over during the noon 309 hour?

Mr. Callaghan: I will ask one question.

By Mr. Callaghan:

Q. Was anything on that truck assigned to the Dearborn Chemical Company?

A. There was an enclosure in the front of the trailer.

Q. Was that delivered at the time you delivered the trailer to your establishment?

A. Yes, sir.

Q. Did you check the contents?

A. No, sir.

Mr. Callaghan: That is all.

The Court: Is there any redirect on the cross examination that has occurred? In other words, we will finish with the witness, all except their checking that supporting data.

Mr. Downing: I have just a couple of questions.

The Court: You may ask your redirect now.

Redirect Examination

By Mr. Downing:

Q. In connection with these cartons, Government's exhibits 1 to 5, and Government's exhibit 65, you stated that was in Detroit when you first saw them?

A. Part of them, sir.

310 Q. And by that you mean not all of them were shown to you there?

A. No, sir.

Q. Approximately when was that, as best you can recall?

A. I haven't the correct date, but—

Q. Was it in connection with the appearance before the Federal Court in Detroit, Michigan?

A. Yes, sir, that's right, sir.

Q. Now, you were shown this on cross examination, this Government's exhibit 77, marked for identification. With respect to the quantities appearing on the right of the types, when did you place those quantities thereon?

A. As the trailer was being unloaded.

Q. And so that the quantities to the right of the various items, where there are quantities listed, they were placed thereon as quantities of the truck unloaded, is that right?

A. That's right.

Q. When you answered Mr. Callaghan with respect to the other items that appeared thereon, was that with respect to the truck brought up before?

A. That's right, sir.

Q. And the quantity to the right represents what was received of that particular type, is that right?

A. That's right, sir.

311 Q. Mr. Walsh asked you how many were received of the items for Brulatour. I believe you stated 33, is that correct?

A. 33, right.

Q. And how many, according to your records, on Government's Exhibit 77, based upon information which you had available, would be on that shipment?

Mr. Walsh: I object to that.

The Court: If you ask him how many were shipped—
By Mr. Downing:

Q. How many were shipped according to your records?

A. I didn't quite get the question.

Q. With respect to the entry on here for Brulatour wherein you note there 33 were received, how many were shipped?

A. 39 were shipped.

Mr. Downing: That is all.

The Court: Any recross examination?

Mr. Callaghan: No, your Honor.

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Recross Examination

By Mr. Walsh:

Q. After you had unloaded the trailer, was anything left on it?

Mr. Downing: Just—

By the Witness:

A. Yes, sir.

Mr. Walsh: He has just testified he counted it as it was unloaded.

Mr. Downing: Just a minute, your Honor. May I make this objection? This is certainly not recross examination.

The Court: You asked him how many he unloaded of the Brulatour shipment.

Mr. Downing: Yes, that is all.

The Court: And how many were shipped, and he is asking him if anything else was on the truck after he unloaded it.

Mr. Downing: If he confines it to Brulatour—

The Court: You can bring out what it was.

By Mr. Walsh:

Q. When you took off these 33 for Brulatour was there anything else left?

A. Nothing except the shipment for this chemical concern, sir.

313 Q. And that was a separate shipment?

A. That is right, sir.

Q. And it was still on the trailer?

A. That was still on the trailer, yes, sir.

Mr. Walsh: That is all.

Mr. Downing: That is all.

The Court: Then, with the exception of checking that supporting data, this witness is finished. If you have any questions on cross examination after the exhibits after you have checked that data you may ask those at two o'clock.

319 Q. Your name is Mr. Hawken?

A. Yes.

Q. You are the same Mr. Hawken who was previously sworn and testified this morning in this court room in this matter, is that right?

A. Yes, sir.

Q. Mr. Hawken, I now show you Government's Exhibits 93 and 94.

A. Yes, sir.

The Court: 94 was previously marked—

Mr. Downing: Defendants' Exhibit 4.

The Court: Yes.

By Mr. Downing:

Q. I ask you to look at those documents, and I ask you if you recognize those to be documents of Eastman Kodak Company.

A. Yes, sir.

Q. With respect to each of those documents I ask you if those documents were received by you in the regular course of business?

A. Yes.

320 Q. Was it a regular course of your business to receive such documents at the Chicago office of the Eastman Kodak Company?

A. Yes.

Q. With respect to Government's Exhibit 94 marked for identification, will you explain to the court and jury briefly what those documents represent? That is the one in the envelope.

A. Documents in the envelope are the fanfolds, the IBM cards, to cover the shipment from Rochester.

Q. That is the shipment about which you testified this morning?

A. Yes.

Q. With respect to Government's Exhibit 93, the sheet of paper you have in front of you, that represents what?

A. This is a list of the IBM cards as you have the IBM cards in Exhibit 94.

Q. So that Government's Exhibit 93 for identification, would you call that a summary of the IBM cards?

A. Yes.

Q. Those are the IBM cards included in Government's Exhibit 94?

A. That is correct.

321 Q. I direct your attention to Government's Exhibit 93 marked for identification, to the eighth line thereon, and I ask you with respect to the fourth column from the righthand side, on that line, what that column represents.

A. Amount of cases, 116 Verichrome film.

Q. Is that the amount of cases that were listed on here in the shipment in transit as represented on Government's Exhibit 93?

A. Yes, sir.

Q. With respect to the pencil notations appearing on Government's Exhibit 93 marked for identification, immediately following the typewriter printing "V116," what does that represent?

A. That is the actual amount of cases we received.

Q. And the total of these represents—that is, these figures 45, 45, 45 and 12—represents the total number of cases of that type of film received by you at the Eastman plant in Chicago on July 11, 1950, is that correct, sir?

A. Correct, sir.

Q. Have these documents been in your custody since that time, sir?

A. Yes, sir, that is, in our files, not exactly mine—322 the company file.

Q. In the company's file at Chicago?

A. Yes.

Mr. Downing: With respect to Government's Exhibits 93 and 94, the Government would like to offer these in evidence, in addition to the ones heretofore offered.

The Court: Very well. You may cross examine.

Cross Examination

By Mr. Walsh:

Q. For my benefit, and for anybody that is not an office manager, what does "IBM" mean?

A. That is a certain type of method they have of typing up those cards, filled in at the production end of the company.

Q. I will show how smart I am. Doesn't it refer to International Business Machines Company, and isn't that a system of bookkeeping there that the Eastman Kodak Company uses?

A. It could be. I am not aware of that.

Q. And this sheet, as I understand your testimony—

~~Mr.~~ Downing: Government's Exhibit 93.

By Mr. Walsh:

323 Q. —Government's Exhibit 93, contains totals and tabulations from these—

A. Of all those cards.

Q. Of all these business form cards here?

A. Yes, sir.

Q. Are these in any particular order in here?

A. They were, but they are not now, sir.

Mr. Walsh: That is probably my fault. Will you put them in the envelope before you go?

That is all.

Mr. Callaghan: That is all.

(Witness excused.)

Mr. Downing: May we have a ruling?

The Court: Objection, if any, to the Government's Exhibits—you removed the recapitulation, didn't you?

Mr. Downing: Yes.

The Court: What are the exhibit numbers now?

Mr. Downing: Government's Exhibits 75, 76, 77, 72, 93 and 94.

The Court: Any objection?

324 Mr. Callaghan: As to Government's exhibits 93 and 94, the defendant Gordon has no objection.

The Court: Do you have any, Mr. Walsh?

Mr. Walsh: No, your Honor.

The Court: Exhibits 93 and 94 are received in evidence. (Said documents so offered and received in evidence, were marked Government's Exhibits 93 and 94).

Mr. Callaghan: As to Government's exhibit 75, I have the objection that was urged when the evidence that is contained thereon, was offered. It is exactly the thing to which your Honor has consistently and repeatedly sustained objections.

The Court: Well, by removal of the recapitulation, the ground of my ruling sustaining the objection, I think was met. This represents his computations against which the jury can make their own recapitulation, if they want to.

Mr. Callaghan: If you look at the first sheet, you will see what I have reference to there. That is arithmetic about which we have been speaking.

The Court: Do you have any additional objections other than those urged?

Mr. Walsh: No objections other than those urged.

325 The Court: The objections are overruled and Government's exhibits 75 and 76 will be received in evidence.

(Said documents so offered and received in evidence, were marked Government's Exhibits 75 and 76)

The Court: What is that you have in your hand?

Mr. Callaghan: This is 72.

The Court: I thought that was received.

Mr. Downing: No, No. 73 was received. I didn't offer you 72.

Mr. Callaghan: I have the same objection to that as to the previous document, because of the written evidence which is contained on that document.

The Court: Is that the notation in the handwriting of Hawken, you mean?

Mr. Walsh: Yes, sir.

The Court: That was the same objection that you made to the other?

Mr. Callaghan: Yes, your Honor.

The Court: Then I think this stamp should also be obliterated.

Mr. Downing: Yes.

The Court: With that correction, Government's Exhibit 72 will be received in evidence. The objections are overruled.

326 (Said document so offered and received in evidence, was marked Government's Exhibit 72).

The Court: Call your next witness.

JAMES I. MARSHALL, called as a witness on behalf of the Government herein, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Downing:

Q. Will you state your name, please?

A. James I. Marshall.

The Court: James I. —

The Witness: Marshall.

By Mr. Downing:

Q. In what town do you live, Mr. Marshall?

A. Highland Park, Michigan.

Q. What is your business or occupation, sir?

A. I am a jeweler.

Q. And where is your store located?

A. In Ferndale, Michigan.

Q. How long have you been so engaged?

A. About 4 years.

Q. Now, directing your attention to July 20, 1950,
327 did you have occasion to make a trip to Chicago?

A. Yes, sir.

Q. And with whom did you come, if anyone, at that time?

A. Mr. Albert Swartz.

Q. And how did you come from Detroit?

A. We came in my car.

Q. Will you describe your car, at that time?

A. It is a '50 Buick Riviera, a light blue bottom and a dark blue top.

Q. Do you recall the license plates, the numbers, that is, of the license plates?

A. I don't recall right now.

Q. You cannot recall at this time?

A. I cannot recall.

Q. To refresh your recollection, were they 1950 Michigan Em-9645?

A. Yes, I believe that is it.

Q. Now, after reaching Chicago, what did you do?

A. We parked it in a lot, in a parking lot.

Q. Where was the lot?

A. On East Adams.

Q. Is that downtown here in Chicago?

A. Yes, near Wabash.

328 Q. Is that just off Wabash Street on East Adams Street?

A. Yes.

Q. And approximately what time of the day was that, as best you can recall now?

A. About 1:30.

Q. That is in the afternoon, is it?

A. In the afternoon.

Q. Now, after parking your car, what did you do?

A. We went into the jewelry store next to the parking lot.

Q. Do you remember the name of the jewelry store next to the parking lot?

A. Liberal Loan.

Q. That is on East Adams Street, downtown here in Chicago?

A. That's right.

Q. Now, after you went into the Liberal Loan Bank, did Mr. Swartz go in the place of business there with you?

A. Yes, sir.

Q. After you went in there, what did you do?

A. I was introduced to Mr. Gordon.

Q. And do you see Mr. Gordon in the court room at the present time?

329 A. Yes, sir.

Q. Which one is he? Point him out, please.

A. Mr. Gordon is the one in the grey suit (indicating).

Q. That is the second man at counsel's table?

A. Yes, sir.

Mr. Downing: Let the record show that the witness has identified the defendant Kenneth Gordon, if the Court please.

By Mr. Downing:

Q. Who introduced you to the defendant, Kenneth Gordon?

A. Mr. Swartz.

Q. Now, after you were introduced to the defendant Gordon, what took place?

A. Mr. Swartz went in the back room and talked with Mr. Gordon.

Q. In the back room of the store there, is it?

A. Yes, sir.

Q. Approximately how long did the defendant Gordon and Swartz stay in the back room there at that place?

A. A short while.

Q. Then what took place?

A. Then Mr. Swartz and I left.

Q. Keep your voice up.

A. Mr. Swartz and I went to eat.

330 Q. Then what took place?

A. Then we came back to the Liberal Loan Bank, I believe it was.

Q. Then that is the same place where you had met this defendant Gordon, is that right?

A. That's right.

Q. Then what took place after you came back there?

A. Mr. Swartz, Mr. Gordon, and myself left in my car.

Q. Then where did you go?

A. We picked up Mr. Gordon's car.

Q. And where did you pick up Gordon's car?

A. I don't know.

Q. Was it in the immediate vicinity of the jewelry store where you had been?

A. Yes.

Q. Then after that, then what took place?

A. Then we drove to—oh, I don't know, about 15 minutes we drove.

The Court: I cannot hear. Will you speak louder?

The Witness: We drove for about 15 minutes to a garage.

By Mr. Downing:

Q. Do you know where that was located?

A. No, I don't.

331 Q. You don't recall the address of that at the present time?

A. No.

Q. Your answer to that is, "No"?

A. No, sir.

Q. And how did you get to the garage? That is, were you directed to the garage?

A. I followed Mr. Gordon's car.

Q. And then after you reached this garage, what took place?

A. There was a truck in the garage, and someone pulled the truck out of the garage, and I pulled my car into the garage.

Q. And who was present at the time that you pulled your car into the garage?

A. Mr. Swartz, Mr. Gordon, and I believe Mr. MacLeod.

Mr. Walsh: I object to that. He says he believes.

The Court: Ask another question.

By Mr. Downing:

Q. Do you see the person in the court room that you are referring to?

A. I believe Mr. MacLeod.

Mr. Walsh: I object to that and move that it be
332 stricken.

The Court: It may be stricken.

By Mr. Downing:

Q. What is your best recollection as to whether or not the man you refer to as Mr. McLeod, that you refer to, was present at that time.

Mr. Walsh: I object to that question.

The Court: Overruled.

By Mr. Downing:

Q. What is your best recollection with respect to the other man that you saw, whether or not that was Mr. MacLeod?

A. It resembled Mr. MacLeod.

Q. By "Mr. MacLeod" are you referring to—

Mr. Walsh: I move to strike that.

The Court: Denied.

By Mr. Downing:

Q. By "Mr. MacLeod" are you referring to someone in the court room?

A. Yes, sir.

Q. Which one are you referring to?

A. Mr. MacLeod is the man in the grey suit with the blue tie.

Q. Is that the fourth man at the table?

333 A. Yes, sir.

Mr. Downing: Let the record show that the witness has identified the defendant MacLeod.

Mr. Walsh: I object to that. He simply stated that the fourth man is Mr. MacLeod. He didn't identify him.

The Court: The extent to which he identified him is apparent in the record. That is as far as he can go.

By Mr. Downing:

Q. Now, what kind of a truck was this, do you recall, that was pulled out of the garage?

A. Yes, it was an old truck; it was dark, an old make, about '29 or '31, I imagine.

Q. Keep your voice up, Mr. Marshall.

A. And I believe it had the name of "White"—"Charles White" on the side of it.

Q. Who drove that truck out of the garage?

A. I told you I believe it was Mr. MacLeod.

Mr. Walsh: Well, I move to strike that again, your Honor.

The Court: Denied.

By Mr. Downing:

Q. Then what took place after you backed your
334 car into the garage?

A. There was film. There was cases of film stacked up in the garage, and under Mr. Swartz' guidance we proceeded to—

The Court: I cannot hear him.

By Mr. Downing:

Q. Keep your voice up.

A. Under Mr. Swartz' guidance I put some film in my car, filled the back end up and the back of the back seat.

Q. Who else was present at the time that you loaded this film into your car?

A. Mr. Gordon and Mr. MacLeod.

Q. Did either of those two men assist you in the loading of the car?

A. Yes, sir.

Q. One, or both of them, as best you can recall?

A. I believe both of them.

Q. Now, will you describe the type of cartons that you placed in the back of your car at that time and place?

A. They were kodak film cartons, and they were about—oh, one foot by two feet by about twelve inches deep.

Q. And do you recall the color of the carton?

A. It was a greyish carton.

Q. And to your knowledge, was there any listing
335 or record prepared of the type and number of cartons received at that time by you?

A. Yes, sir.

Q. And do you have such a record?

A. I had that record.

Q. And what did you do with that record?

A. I kept it and it was finally turned over to the FBI.

Q. Do you remember the name of the man at the FBI that you turned it over to?

A. Mr. Shearer.

Q. Now, do you recall the type of film that was received by you at that time?

A. Yes, sir, it was 11 cases of 8 millimeter magazine Kodachrome; 10 cases of roll Kodachrome, Cine Kodak.

Q. Ten cases of what?

A. Of roll film, and there was 13 cases of 116 film.

Q. All right. And do you recall after that, after you loaded this film into your car—then what took place?

A. We left Mr. Swartz, and I left for Detroit.

Q. And before you left, did you obtain from either the defendant Gordon, or the defendant MacLeod, any sales slip or invoice for these cartons?

A. No, sir, I didn't.

336 Q. Did you ever see any sales slip or invoices for those cartons?

A. No, sir.

Q. Approximately what time did you leave Chicago for Detroit?

A. I believe it was about 5:30.

Q. And who went with you on your return trip back to Detroit?

A. Mr. Swartz.

Q. And did you take all of the film that you have just testified about receiving here in Chicago?

A. Yes, sir.

Q. And you took that back to Detroit, Michigan, on that date?

A. Yes, sir.

Q. Approximately what time did you arrive back at Detroit?

A. I believe it was about 1:30.

Q. In the morning?

A. In the morning.

Q. Where did you first go after reaching Detroit?

A. I drove Mr. Swartz home.

Q. And at that time what was Mr. Swartz' address?

A. It was 45 or 4039 Sturtevant.

Q. Sturtevant?

A. Yes, sir.

Q. Is that in Detroit?

A. Yes, sir.

Q. At that time, any of the film that was in the car, did Mr. Swartz take any of the film?

A. Yes, sir, he took two cases—two or three cases.

Q. Do you recall the type of film that he took at that time?

A. He took one of the magazines, one case of the roll; and one case of the 116.

Q. Then what did you do after delivering Swartz to his home?

A. Well, it was so late by the time we got home that I kept the film in my car instead of taking it downtown to Mr. Swartz' office, and I went home and I left the film in my car.

Q. And thereafter what did you do with the film?

A. The next morning I took it out to my store.

Q. Directing your attention to Government's exhibit 78, marked for identification, I ask you to look at that and I ask you if you have seen that before?

A. Yes, sir.

Q. From whom did you obtain that document?

337 A. Mr. Swartz gave me this.

Q. When did you obtain it?

A. The day we left Chicago, on the way back to Detroit.

Q. Is that the day about which you just testified, the 20th of July?

A. Yes, sir.

Q. And is that the list of the film that you previously referred to, that you turned over to Agent Shearer of the FBI?

A. Yes, sir.

Q. And in whose writing is the writing in dark ink appearing on the reverse side of that document?

A. That is Mr. Swartz'.

Q. Was that placed there in your presence on or about July 20, 1950?

A. Yes, sir, on the way driving back to Detroit.

Q. Now, with respect to the writing in light ink appearing in the lower left hand corner of the reverse side of that document, by whom was that writing placed there-on?

A. That was my writing.

Q. When did you place that writing on there?

A. 8-25-50.

Q. And in connection with—

338 A. August 25, 1950.

Q. August 25, 1950?

A. Yes, sir.

Q. In connection with what event did you place that on there—that is, your writing?

A. Yes, sir.

Q. Will you explain the purpose for putting your writing on there?

Mr. Walsh: I object to this.

The Witness: This was taken from me on that day.

The Court: Overruled.

By Mr. Downing:

Q. Is that the date, August 25, 1950, the day that you turned it over to Agent Shearer, as you previously testified?

A. Yes, sir.

Q. With respect to the listing in dark on the reverse side of Government's exhibit 78, does that represent quantity of film that was obtained, as you testified?

A. It does.

Q. Will you explain each of those lines, what they represent, the film represented thereby?

A. It was five hundred and fifty rolls of magazine 339 film that I was to sell at \$1.75, one thousand rolls—

Mr. Callaghan: Wait a minute, please. Obviously what is on there is the content of the conversation he had with Mr. Swartz.

Mr. Downing: He can testify what that document represents, your Honor.

Mr. Callaghan: No.

The Court: Let me see the document. Wouldn't you rather have the jury excused?

Mr. Callaghan: Yes, I would, if your Honor please.

The Court: The jury may be excused.

(The following proceedings were had out of the presence and hearing of the jury:)

The Court: Now, you are asking the witness to explain the notations on this card?

Mr. Downing: That's right, your Honor, on the reverse side of the card, in dark ink.

The Court: Yes, and your objection, Mr. Callaghan?

Mr. Callaghan: Well, I think he might possibly testify to the content of what is on this card, that the card bears certain figures, and so on, but he now amplifies what is said on the card and says that this represents five 340 hundred and fifty rolls of something which he was to sell at \$1.75. There is nothing like that on the card at all. He obviously is testifying to something which occurred in a conversation between him and Swartz. All that appears on this card is "550 at \$1.75, 1000 at \$1.50, and 13 boxes of 300 at 25 cents. Al took 100 at \$1.75." Then there is ditto, ditto under "Al took" and "100 at \$1.50."

The Court: Is that also in the handwriting of Swartz, this "Al took"?

Mr. Downing: He identified all of the dark ink writing on the reverse side as Swartz' writing.

The Court: What is your theory as to the admissibility of this which is obviously the agreement between himself and Swartz as to the price at which this is to be sold, if that is what you are getting into.

Mr. Downing: No, the mere purpose—

The Court: It is a conversation.

•Mr. Downing—Not a conversation either, but merely to explain this figure of 550 at \$1.75. In other words, so we will have a better understanding of what the 550 represents, and what the \$1.75 represents, and the type of film.

Mr. Walsh: How did he learn what it meant? He obviously learned it from Mr. Swartz.

341 Mr. Downing: If he has knowledge as to what it is, he was present when the film was loaded, and certainly knows the type of film in the car.

The Court: As to what the 550 represents?

Mr. Downing: That is a quantity.

The Court: That is quantity, obviously. You mean you want him to say as to what part of the shipment in his car the 550 made up?

Mr. Downing: The type of film. In other words, 550—

The Court: Why don't you ask him how many films of each kind he had in his car? I would be inclined to sustain—in fact, I think I have to sustain an objection as to any conversation between him and Swartz outside of the hearing of the defendants. If this conversation was held in the garage and the defendants were present, that is something else again.

Mr. Downing: It is not a conversation I want to have introduced at all. It is merely an explanation of what these figures represent, according to his knowledge.

The Court: Couldn't you get that by direct evidence, by asking him the direct question as to the type of films he had in his car, and if they total up the same number as you say it already comes out?

342 Mr. Downing: He already testified to that.

The Court: The other gets into the possibility of a conversation which is objectionable.

Mr. Downing: The only other point I had in asking the question, your Honor, was also to explain the figures, \$1.75 and \$1.50. Now, the 25 cents is obvious, but the \$1.75 and \$1.50, I think he has a right to explain, if he knows what those figures represent to him.

The Court: Well, his obvious explanation is that Swartz told him those figures.

Mr. Downing: That is not necessarily the basis for his knowledge. If they want to probe what is the basis for his knowledge, they can do that on cross examination.

The Court: Why don't you ask him did he sell any of the stuff himself.

Mr. Downing: Yes.

The Court: Well, you can bring out what he sold for him without getting into the dangerous territory of getting into the conversation with the deceased.

Mr. Downing: It certainly was not my intention to bring in any conversation.

The Court: I don't want error in the record either, if I can help it, and I think you are on dangerous territory.

Guide yourself accordingly. I think the objection thus 343 far is well taken. Bring in the jury.

(Proceedings resumed in the presence and hearing of the jury).

The Court: You may proceed.

By Mr. Downing:

Q. Directing your attention further to Government's exhibit 78, I ask you with respect to the first three lines on the reverse side, the writing on the reverse side, if that represents by line the type of film that you had previously testified to, about which you obtained here in Chicago on July 20, 1950?

A. That was a record that Mr. Swartz gave—

Mr. Walsh: I object to this.

The Court: Sustained. Answer Yes or No.

By Mr. Downing:

Q. Answer Yes or No.

A. Yes, sir.

Q. Now, after the trip about which you testified, on July 20th, did you have occasion to make another trip to Chicago?

A. Yes, sir.

Q. When was that?

A. The next trip was the following Saturday.

The Court: I can't hear.

344 The Witness: The following Saturday.

By Mr. Downing:

Q. Do you recall the day?

A. I believe it was the 22nd.

Q. The 22nd of July?

A. That's right.

Q. And with whom did you come to Chicago on that occasion?

A. With Mr. Swartz.

Q. How did you come to Chicago?

A. In my automobile.

Q. In the same Buick about which you testified?

A. Yes, sir.

Q. Approximately what time did you arrive in Chicago on that date?

A. About 1:30. About the same time, 1:30.

Q. What did you do after arriving here in Chicago on that day?

A. We stopped at the Revere Camera Company.

Q. And thereafter what did you do?

A. After we left the Revere Camera Company, we left a camera to be repaired—we went to the parking lot next to the Liberal Loan Bank.

Q. Is that the same parking lot that you previously referred to?

A. Yes, sir.

345 Q. After parking your car, then what did you do?

A. We parked our car and walked around, and the Liberal Loan Bank was closed, being Saturday, and then we went to eat.

Q. And on that date did you thereafter see the defendant Gordon?

A. Yes, sir.

Q. Approximately what time did you see him on that date?

A. About four-thirty.

Q. And who was with you at that time?

A. Mr. Schwartz.

Q. Where did you see him, as best you recall?

A. I believe it was Division and Michigan, or Division and Lake Shore Drive.

Mr. Callaghan: I can't hear you, Mr. Witness. Keep your voice up.

By The Witness: I am sorry. I believe it was Division and Michigan or Lake Shore Drive.

By Mr. Downing:

Q. Is that on the near north side here just outside the Loop in Chicago here?

A. Yes, sir.

Q. Will you describe what took place when you first saw the defendant Gordon on that date?

A. Mr. Gordon got into his car and drove into an alley right off of that street, and parked.

Q. What did you do? Did you drive in the alley also?

A. Yes, sir, I parked in back of Mr. Gordon.

Q. Was there anyone else present besides you and Mr. Gordon?

A. No, sir.

Q. Was Mr. Schwartz also present at the same time?

A. Yes, sir.

Q. Was he with you?

A. Yes, sir.

Q. After you drove back into this alley, what did you do?

A. Mr. Schwartz got out of the car and went and talked with Mr. Gordon.

Q. Approximately how long did they talk?

A. Five minutes.

Q. Where did they talk, or did you see?

A. Mr. Gordon's car.

Q. All right, and then what took place?

A. Then Mr. Gordon told me to back my car up alongside of a car that was parked in the alley.

Q. Where was this truck parked, do you recall?

347 A. A little driveway that was in the alley.

Q. What type truck was this?

A. It was the same black car I described.

Q. The same black truck you have described?

A. Yes.

Q. Is that the one you had seen on the previous trip to Chicago?

A. Yes, sir.

Q. Then what took place after Mr. Gordon directed you to back your car up alongside this truck?

A. Mr. Gordon and myself put about ten or eleven rolls of film—or cases of film, into my car.

Q. And were the cartons the same type as you previously had seen and taken back to Detroit?

A. Yes, sir.

Q. Were those cartons full or empty cartons?

A. Full cartons.

Q. With respect to July 20th—I forgot to ask you this—back on the July 20th trip were those cartons full or empty cartons?

A. They were all full. We had one sample of a 16 millimeter film.

Q. That was on the 20th?

A. Yes, sir.

348 Q. Back on this second trip were the cartons—
where were the cartons of film obtained from at the
time you loaded them in your Buick on the second trip, July
22?

A. From the truck, back of the truck.

Q. Did anyone else assist in the loading of the film besides the defendant Gordon?

A. No, sir.

Q. In connection with that transaction did you see any sales slip or invoice in connection with that transaction?

A. No, sir.

Mr. Walsh: In regard to the defendant MacLeod I move to strike the testimony regarding the 22d because this witness does not even know a man that would resemble him as being present that day, and the date is not mentioned in the indictment in any way whatsoever.

The Court: Yes. In any event, if there is no further connecting up of the defendant MacLeod an appropriate instruction will be given to the jury at the right time, and I direct you to remind me at the time the jury is instructed. Certainly you are entitled to such an instruction and it will be given.

349 By Mr. Downing:

Q. Mr. Marshall, I now show you Government's Exhibits 79, 80, 81 and 82, purporting to be certain photographs, and I ask you to look at them and ask you if you can identify the location illustrated in each one of those photographs.

A. This is the alley I pulled into on the second trip.

Q. By this you are referring to Government's Exhibit 79, is that right, sir?

A. Yes, sir.

Q. With respect to Government's Exhibit 80?

A. This is a view of the alley.

Q. Is that a view of the same alley?

A. Yes, sir.

Q. All right. With respect to Government's Exhibit
81?

A. This is the same alley.

Q. With respect to Government's Exhibit 82?

A. This is the same T-shaped alley where the truck was parked and I parked my car.

Q. In relation to the space where the car illustrated in this photograph is now shown, where was the truck parked on that date, July 22?

A. On the opposite side.

Q. In the vacant spot there, is that right?

350 A. In the vacant spot.

Q. And where did you pull your car—

A. Alongside—where this car is now parked.

Mr. Walsh: This is Exhibit what?

Mr. Downing: 82.

By Mr. Downing:

Q. And those are the scenes of the location where you secured the film on the second date, is that right, sir?

A. That is.

Q. After the film was in your car on July 22, what next took place?

A. We left for Detroit, Mr. Schwartz and myself.

Q. And what time did you reach Detroit, Michigan?

A. 1:30 in the morning.

Q. And what took place after reaching Detroit?

A. I dropped Mr. Schwartz off and I went home.

Q. And what took place with respect to the film, if anything?

A. I left the film at my house, in front of my house, in the car. I went to sleep after.

Q. Then when did you, if you did, unload the film from your car?

A. The next day, Sunday, I unloaded the film.

Q. That is the same load of film you brought from
351 Chicago and obtained in this alley as you previous testified?

A. Yes, sir.

Q. Thereafter did you have occasion to make another trip to Chicago?

A. Yes, sir.

Q. When did you make the next trip to Chicago?

A. I believe it was Thursday, the 27th, I believe.

Q. 27th of July?

A. Yes, sir, a week from the first trip.

Q. A week from the first trip?

A. Yes.

Q. With whom did you come to Chicago on this trip?

A. With Mr. Schwartz.

Q. How did you come to Chicago at this time?

A. In my Buick.

Q. That is the same Buick you previously described?

A. The same.

Q. Approximately what time did you reach Chicago on this day, as best you can recall?

A. About 11:30.

Q. What did you do after reaching Chicago?

A. I parked in the same parking lot.

Q. That is the one over on East Adams Street?

352 A. Yes.

Q. Next to the Liberal Loan you previously testified about?

A. Yes, sir.

Q. Then after parking your car, what did you do?

A. Pulled—we went into the Liberal Loan Bank.

Q. By “we” you are referring to—

A. Mr. Schwartz and myself.

Q. After going inside the Liberal Loan Bank, whom did you see in that place at that time?

A. Mr. Gordon.

Q. That is the same defendant Gordon you previously have identified here in the court room, is that right?

A. Yes, sir.

Q. Then what took place after you went into the Liberal Loan and saw the defendant Gordon?

A. Mr. Schwartz talked with Mr. Gordon in the back room.

Q. Keep your voice up now. Then after they talked in the back room—approximately how long were they back there?

A. Two or three minutes.

Q. And then what took place?

A. Mr. Schwartz and Mr. Gordon came out and Mr. Gordon gave Mr. Schwartz an address.

353 Q. Was that given to Mr. Schwartz in your presence?

A. Yes, sir.

Q. And then what took place after that happened?

A. Schwartz gave the address to me and said I was driving the car, I would have to know where it was.

Q. Was the defendant Gordon present at that time?

A. Yes, sir.

Q. Was there a conversation about the location of the place in the defendant Gordon's presence?

A. Yes, sir.

Q. Will you tell the court and jury as best you recall what was said with respect to the location?

Mr. Walsh: I object, as far as MacLeod is concerned.

The Court: Yes. The jury will be instructed at the right time that any conversations in the presence of one defendant but not in the presence of the other are to be regarded only against the defendant who was present and not against the other defendant. That instruction will be given in the proper form to you when you are instructed generally.

You will remind me, Mr. Walsh, to give that instruction.

354 By Mr. Downing:

Q. Will you tell us what was said at that time and place?

A. Mr. Gordon told me to take out—the address was on East Erie Street; I believe, 215, it was on there, there was the name Ken.

The Court: The name what?

The Witness: Ken.

By The Witness:

A. I was—that Mr. Schwartz and myself was to see.

By Mr. Downing:

Q. Did he tell you to see the person, Mr. Ken?

Mr. Callaghan: I object to him leading the witness.

The Court: Sustained.

By Mr. Downing:

Q. What else did Mr. Gordon tell you at that time?

A. That is all. We were just supposed to see this fellow named Ken.

Mr. Downing: Mark this Government's Exhibit 83 for identification.

(Said document was marked Government's Exhibit 83 for identification.)

By Mr. Downing:

355 Q. I now show you a document identified as Government's Exhibit 83 marked for identification. I ask you to look at that and I ask you if you have seen it before?

A. Yes, sir.

Q. With respect to those two documents—I am referring to the larger of the two documents in that envelope—when did you first see that document? Keep your voice up.

A. On the 27th of July, 1950.

Q. From whom was that obtained?

A. Mr. Schwartz gave it to me, handed it to me.

Q. And what relationship if any does that document have with respect to the testimony about the note you previously made?

A. This was the address given to me to go on the 27th. This has no relation to the—

Q. Was that document that was given to you on that date as you testified?

A. Yes, sir.

Q. With respect to that document, I ask you if your writing appears thereon?

A. Yes, sir, in the lower left hand corner.

Q. And is that in the light bluish type ink?

356 A. Yes, sir.

Q. When did you place your writing on that document?

A. August 25, 1950.

Q. And after placing your writing thereon, to whom did you give that exhibit?

A. Special Agent Scheer.

Q. He is from the FBI?

A. FBI.

Mr. Callaghan: August 22?

Mr. Downing: August 25.

The Witness: 25.

By Mr. Downing:

Q. With respect to this July 27, 1950, after receiving this note Government's Exhibit 83 which I have just shown you, what did you do?

A. On receiving that note—

Q. Yes, after having that conversation you previously testified to.

A. I drove to that address on Erie.

Q. Who was with you when you drove there?

A. Mr. Schwartz and myself.

Q. Then what did you do at 215 East Erie?

A. I parked my car in the alley and I walked around the front of the street there. There is an apartment

357 building. And I rang the bell, and I asked for Ken, and Mr. MacLeod came to the door and said, "I am Ken." And he walked outside with me.

Q. Is this Mr. MacLeod the one you have identified here in the court room?

A. Yes, sir.

Q. Then what took place after he came outside?

A. We walked around the back, to a garage adjacent to 215 Erie.

Q. Is that in the reverse, in the back part of the premises?

A. It is the next building to 215.

Q. All right. And then is that on an alleyway—

A. Yes.

Q. All right. Then what took place?

A. Mr. MacLeod and myself unpacked or unloaded some cases of film from the truck into the garage. Mr. MacLeod drove the truck out, I backed my car inside the garage.

Q. Had you seen that truck before?

A. Yes, sir.

Q. Was that—

A. The same truck that we—

Q. Is that the same truck that you have seen the 358 other two occasions?

A. Yes, sir.

Q. And who drove the truck out of the garage?

A. Mr. MacLeod.

Q. And Mr. MacLeod and you unloaded some film out of the truck, I believe you testified, is that right?

A. Yes, sir.

Q. Then after that what happened, what took place with respect to—what did you do?

A. I drove my car inside the garage and loaded—Mr. MacLeod and myself loaded my car with the cases of film.

Q. And then what took place?

A. We left, and went back to Detroit.

Mr. Callaghan: Who is "we"?

The Witness: Mr. Schwartz and myself.

By Mr. Downing:

Q. Approximately how much film did you load in your car on that occasion?

A. Approximately 25 cases.

Q. Do you recall the type of cases they were?

A. It was five cases, 100 each, of the 16 millimeter professional color film.

Mr. Walsh: I can't hear you.

359 The Court: Speak louder.

The Witness: Five cases of 100, the 116 color film.

By Mr. Downing:

Q. What was the balance of the film?

A. The rest of it was the roll cine Kodak 8 millimeter film.

Q. I show you Government's Exhibit 1 marked for identification and ask you to look at that, and ask you to look at the contents therein.

A. Yes, sir, that is the professional film.

Q. I ask you if that is the type of professional film you have referred to in your previous answers?

A. Yes, sir.

Q. And there were five cases of this type of film?

A. Yes, 100—there was one missing.

Q. Pardon me?

A. There was one missing, out of one carton.

Q. Do you mean—

A. One roll.

Q. Of the boxes, which are contents, one was missing, is that right?

A. Yes, sir.

Q. Out of one carton?

360 A. Yes.

Q. With respect to the balance, was the balance of the cartons full at that time?

A. Yes, sir.

Q. Does that apply to this other type of film in addition to the 16 millimeter professional?

A. They were all full except for the one.

Q. And it was one carton of professional type where there was one missing, is that right?

A. That is right.

Q. At that time did you receive or see any sales slip or invoice in connection with that transaction?

A. No, sir.

Q. In connection with your unloading of the truck at that particular time as you have testified, were there any cartons of film left on the truck that you could see?

A. Yes, sir.

Q. Approximately how many, as best you can recall, were there left on the truck that you observed at that time?

A. It was a little less than half full.

Q. That is, the truck after it was unloaded was about a little less than half full?

361 A. Yes, sir.

The Court: We will take our afternoon recess at this time. Recess for ten minutes.

(Recess taken.)

The Court: You may proceed.

Mr. Downing: Thank you, your Honor.

By Mr. Downing:

Q. Mr. Marshall, I show you Government's Exhibits 84, 85, 86, 87 and 88, and ask you to look at each of those exhibits, and I ask you if you can identify the location illustrated therein?

A. Yes, sir.

Q. With respect to the location illustrated therein, I ask you where that is.

A. This is the address on 215 East Erie where I took the note—

Q. 215 East Erie?

A. Yes.

Q. With respect to Government's Exhibit 84 I ask you if that is the entrance to which you first went as you previously testified when you reached the address at 215 East Erie.

A. Yes, sir, I parked my car in the alley alongside of—

362 Q. Is that the alley that is illustrated in the photograph?

A. Yes, sir.

Q. With respect to Government's Exhibit 85, I ask you if that also is a front view of the address to which you went?

A. The righthand building is.

Q. With respect to Government's Exhibit 86, I ask you if that is the alley in which you parked your car as you previously have testified.

A. I believe so. I couldn't—

Q. That is your best recollection, is it?

A. Yes, sir. That is not very clear—

Q. That isn't too clear to you, is it?

A. No, sir.

Q. But you parked your car in the alley that is illustrated in Government's Exhibit 84, is that right?

A. Yes, sir.

Q. Now with respect to the location illustrated in Government's Exhibit 87, I ask you if one of the doors indicated therein is where you backed your car in?

A. Yes, sir.

Q. And which door is it?

A. The right door here.

363 Q. That is the double door on the face of the picture, is that right, sir?

A. Yes, sir.

Q. With respect to Government's Exhibit 88 I ask you if that door is also illustrated therein?

A. Yes, sir.

Q. And both of the locations illustrated on the photographs Government's Exhibits 87 and 88, are they the rear of this address that you went to on July 27?

A. This is 215. Here, I don't know the address.

Mr. Walsh: I can't hear.

By Mr. Downing:

Q. The lefthand side is 215?

A. The lefthand side is 215.

Q. And you were not acquainted with the address behind which the garage was located?

A. No, sir.

Q. The garage was adjacent to the 215 building, is that right, sir?

A. That is right.

Q. After you obtained this film on July 27, what did you do after loading the film into your car?

A. Mr. Schwartz and I—and myself—went back to Detroit.

364 Q. Approximately what time did you leave Chicago, do you recall?

A. It was around two, three o'clock. Two, two-thirty.

Q. And with whom were you?

A. Mr. Schwartz and myself.

Q. And did you take the load of film which you obtained in the garage which you have just testified about on that date?

A. Yes, sir.

Q. And where did you take the film to?

A. I went to Mr. Schwartz's home. I dropped off part of the shipment to him, and the rest of it I took out to my store. The store was still open.

Q. Mr. Schwartz's home is the address in Detroit you referred to, is that right?

A. Yes, sir.

Q. Approximately when did you reach Detroit?

A. About eight, eight o'clock.

Q. With respect to this load of film, was that all of the cases, were they all full, that you received on this third trip?

A. All but the one.

Q. As you previously testified. Do you recall approximately how many of the cartons were left with Mr. Schwartz on the third trip, July 27?

A. One case of 16 millimeter commercial film, and one case—I am not exactly sure of the amount; but there were several cases of roll film.

Q. Did you know that there was one case of 16 commercial type, the type of which I showed you, in this carton Government's Exhibit 1?

A. Yes, sir.

Q. And was that a full case?

A. Yes, sir.

Q. And what other type of film did Mr. Schwartz take at that time, or did you leave it at his place?

A. The roll film he took quite a few cases, I don't remember exactly.

Q. That was the 8 millimeter type roll film?

A. Yes.

Q. That was the only other type you had with you on that trip, is that right?

A. On that trip.

Q. You don't recall exactly how much was left with Mr. Schwartz at that time?

A. I don't remember the exact amount.

Q. Then what did you do?

A. I went to my store in Ferndale.

366 Q. And what happened then?

A. It was about eight-thirty, and I had the clerk that works for me to unpack my car and put the film in the basement.

Q. That was on the evening of July 27th?

A. That is Thursday evening.

Q. That was in Ferndale, Michigan?

A. Yes. We were open until nine o'clock.

Q. In connection with the film which you had obtained on these trips, what disposition was made, to whom did any of that film go, to your knowledge?

A. I sold, oh, between ten and fifteen cases.

The Court: You will have to speak louder.

The Witness: I sold between ten and fifteen cases of the film to Mr. Ahee.

The Court: What is that name?

The Witness: Mr. Edmund T. Ahee, of Detroit.

By Mr. Downing:

Q. Spell it.

A. A-h-e-e.

Q. Did any of the film go to anyone else besides Mr. Ahee, that is, the film you brought, to your knowledge?

A. No, there was none.

367 Q. And approximately how much a case did you sell the film to Mr. Ahee—

A. \$1.75 a roll for the 8 millimeter mag—or 8 millimeter roll film, and \$2.00 for the magazine.

Q. That is the 8 millimeter magazine?

A. Yes, sir.

Q. All right.

A. And 20c a roll for the 116, the small rolls.

The Court: What?

The Witness: 116, the small—

By Mr. Downing:

Q. 116 Kodak type?

A. Yes.

Q. How much, what price?

A. That was 20c a roll.

Q. 20c a roll, and you don't recall exactly how much it was that you sold to Mr. Ahee, at this time?

A. At one time I sold him 10 cases of the roll film and quite a few cases of the magazine. I don't remember exactly. And one case of the 116 small Kodak film, and another occasion I sold him two cases of the roll film.

Q. That is the 8 millimeter roll film?

A. 8 millimeter roll film.

Q. To your knowledge did anyone besides Mr. Ahee get any of this particular film you brought back besides
368 Mr. Ahee and Mr. Schwartz?

A. Not to my knowledge.

Q. In connection with the transaction about which you have just testified, have you ever been arrested in connection with that matter?

A. Yes, sir.

Q. When did that take place?

A. On the 28th of July.

Q. Is that the day following this third trip about which you testified?

A. Yes, sir, the next day.

Q. Where were you arrested at that time?

A. In Detroit.

Q. At that time did you turn the film over to any of the Agents of the Federal Bureau of Investigation?

A. Yes, sir, I turned all the rest of the film that I had.

Q. In connection with the charges arising out of such arrest have you entered any plea in the Federal District Court in Detroit?

A. Yes, sir, I pleaded guilty on possession of this film.

Q. And have you been sentenced as yet in connection with that matter?

369 A. No, I haven't.

Q. Upon what date did you turn over the film that you still had on hand to the Agents of the Federal Bureau of Investigation?

A. On the 28th.

Q. I now show you a document identified as Government's Exhibit 89 marked for identification, and ask you to look at it and ask you if you have seen that before.

A. Yes, sir.

Q. And with respect to that document, does your handwriting appear thereon?

A. Yes, it does.

Q. And where does that appear thereon?

A. The bottom.

Q. And are you referring to the signature?

A. Yes, sir.

Q. With your name?

A. Yes, sir.

Q. And upon what date was that affixed to that document, that is, your signature?

A. 7-28-50.

Q. And was that affixed thereto in connection with the turning over to the Agents of the Federal Bureau

370 of Investigation, the cases about which you have just referred to, that is, the Kodak cases?

A. Yes, sir.

Q. And what Agents of the FBI were present that you recall at the time you signed that?

A. Mr. Scheer, Special Agent Scheer, Mr. Shirley.

Q. Shirley?

A. Shirley, and two other Agents.

Q. And whereabouts did you sign that document, not on the paper, but at what location?

A. This was in my store.

Q. In Ferndale, Michigan?

A. In Ferndale.

Q. After signing the document, to whom did you give it, do you recall?

A. I kept one copy and I gave one copy to Mr. Scheer.

Q. And is that the copy that you gave to Mr. Scheer?

A. Yes, sir.

Q. Mr. Witness, I ask you if you will step down and look at these cartons, Government's Exhibits 1 through 85, and I ask you to look at those, if you will, please. Step down, please.

Starting over here to the left, look at those.

A. Yes, sir.

371 Q. Will you resume the stand again, please?

With respect to those exhibits which I have just shown you, Government's Exhibits 1 through 65, inclusive, I ask you if those are the type of cartons which you obtained in Chicago, as you previously testified in your testimony here today?

A. Yes, sir.

Q. I ask you if that is the type of carton that you turned over to the Federal Bureau of Investigation agents on July 28th, as you have just testified to?

A. Yes, sir, those were the commercial film, and that is the—

Q. By "those," you are referring to the cartons with government exhibit stamped 2, 3, 4, 5; is that right, Sir?

A. Yes, sir.

Q. And the same answer applies with the balance of these cartons, is that right, Sir, the type?

A. The ones I have seen.

Q. That is the type of cartons I have just shown you here in the courtroom?

Mr. Downing: At this time, if your Honor please, 372 the Government offers Government Exhibit '89, and they may cross examine.

The Court: I will hear them on the exhibit after cross examination. Have you finished your direct?

Mr. Downing: May I have just a moment, Your Honor?

The Court: All right.

Mr. Downing: They may cross examine.

The Court: Who wants to take the witness first?

Mr. Callaghan: I will examine him in just a moment.

The Court: Very well, Mr. Callaghan, you may proceed.

Cross Examination

By Mr. Callaghan:

Q. How long have you known Mr. Urokie or Ahee, or whatever his name is?

A. For about two years.

Q. What is his business?

A. He is a jeweler in Detroit.

Q. A jeweler?

A. Yes, sir.

373 Q. How long has he been in business there, do you know?

A. For over a year that I know of. He has been selling—

Q. Did you meet him through Schwartz?

A. No, sir.

Q. Now, you came to Chicago with Mr. Schwartz, did you, on each one of these occasions?

A. Yes, sir.

Q. And on the first occasion you came here at Mr. Schwartz's suggestion, didn't you?

A. Yes, sir.

Q. Did you ever ask Mr. Schwartz for a bill of sale or an invoice for this merchandise?

A. No, sir.

Q. You gave Mr. Schwartz the money for it, didn't you?

A. No, sir, I gave him the money I collected on the films, when Mr. Schwartz bought the film.

Q. How much did you turn over in cash to Mr. Schwartz?

A. At one time I turned over \$1,050, and at different times I turned over—let's see. I turned over \$1,050, and another time I turned over some money and I—

The Court: I cannot hear.

Mr. Downing: Keep your voice up.

By the Witness:

374 A. (Continuing) The only amount I remember is \$1,050 that I gave Mr. Schwartz at one time.

By Mr. Callaghan:

Q. Did that involve one sale?

A. Yes, sir.

Q. How much was that sale?

A. That was for the—

Q. No, never mind what it was for. What was the amount of that sale?

A. It was for the film I sold Mr. Ahee.

Q. How much did you get from Mr. Ahee?

A. \$1,050.

Q. Did you keep any for yourself out of the \$1,050?

A. No, sir.

Q. You turned the whole thing over to Mr. Schwartz?

A. Yes, sir.

Q. You later got some other money that you turned over to Schwartz?

A. Yes, sir.

Q. By the way, when did you make the sale to Mr. Ahee?

A. I made that sale on Monday following the Thursday.

Q. That doesn't mean anything to me, "the Monday following the Thursday."

A. The Monday following the 20th.

375 Q. The Monday following the 20th of July?

A. Yes, sir.

Q. And where did that transaction occur, Mr. Marshall?

A. In Mr. Schwartz's office.

Q. In whose office?

A. Mr. Schwartz.

Q. Was the merchandise then in Mr. Schwartz's office?

A. No, the merchandise was in my store.

Q. Did Ahee pay you in cash?

A. Yes, sir.

Q. In Mr. Schwartz's presence?

A. No, sir.

Q. But the transaction took place in Mr. Schwartz's store or office, whichever it may be?

A. The transaction—when I gave Mr. Schwartz some money?

Q. No, when Mr. Ahee paid you, where did that transaction occur?

A. In my store.

Q. In Ferndale?

A. Yes, sir.

Q. Did Ahee at that time take the merchandise that you sold him?

A. Yes, sir.

376 Q. And do you remember now what it was that you sold him?

A. I don't remember the exact amount.

Q. Do you remember what kind of film it was that you sold him?

A. I know there was one case of 116 millimeter.

Q. One case of 116 millimeter?

A. Yes, and there was one case of the 8 millimeter magazine color film, and there was—there were quite a few cases of the 8 millimeter roll film, roll motion picture camera film.

Q. And was that the time that he gave you the \$1,050?

A. Yes, sir.

Q. Did you make a subsequent sale to Ahee of some more of this merchandise?

A. Yes, sir.

Q. What did you sell him at a later time?

A. I sold him two cases of 8 millimeter roll type film, 100 in a case.

Q. What else?

A. That is all.

Q. How much did they give you on that occasion?

A. On that occasion he didn't pay me. He was going to pay me the next day for it.

377 Q. Did he pay you the next day?

A. No sir.

Q. Had you agreed upon a price?

A. Yes, sir.

Q. How much was he to pay you?

A. \$350—I believe that is the amount. It was \$1.75 a roll and there was 200 rolls.

Q. And that is all you gave to him at that time, was the 200 rolls?

A. Yes, sir.

Q. Did you deliver the merchandise on that day?

A. Yes, sir.

Q. Out of your store in Ferndale?

A. No, I was going downtown. Mr. Ahee called me and I said, "Well, I will meet you downtown, and I will leave it in my car, and I will give it to you from my car."

Q. And you met him in Detroit or some place and delivered it to him at Detroit?

A. Yes. He has a store on Broadway—or he had a store on Broadway.

Q. Now, who else did you sell any of this camera film or this film to?

A. That is all.

378 Q. Did you sell any to Dr. Flick?

A. No, sir.

Q. Do you know Dr. Flick?

A. No, sir.

Q. Did you offer it for sale to any other persons?

A. I believe I did.

Q. To how many other persons did you offer it for sale?

A. Offhand, I couldn't say; there were two or three.

Q. Who paid your expenses from Detroit?

A. To Chicago?

Q. Yes.

A. Mr. Schwartz.

Q. On each occasion Mr. Schwartz paid all of your expenses?

A. On the first trip Mr. Schwartz paid my expenses, and on the second trip we split it—I think it was \$10 apiece.

Q. And on the third, then, that included all of your oil and gas and lodging and meals and everything else?

A. Yes, sir.

Q. And who paid the expense of the third trip?

A. We split it.

Q. You split it?

379 A. Yes, sir.

Q. But you never on any occasion kept any of the money you got for this film?

A. No, sir.

Q. How much money did you come over the period of time between July 20th and July 27th—between the period of July 20th to 27th, how much money did you give Schwartz for this film?

A. \$1,050.

Q. How much?

A. \$1,050.

Q. That is all you gave Mr. Schwartz?

A. I believe that was the full amount.

Q. Did you ever pay Schwartz for all of the film that you brought back from Chicago?

A. No, sir.

Q. Did you ever testify any place that you paid Schwartz for all of this film you brought from Chicago?

A. That I paid—no, sir.

Q. Did you during the month of April of 1951 testify at Pontiac, Michigan?

A. Yes, sir.

Mr. Downing: If Your Honor please, I think that 380 this matter—I have no objection, and I think it should be made outside of the presence of the jury.

The Court: The jury may step out, please.

381 (The following proceedings were had out of the presence and hearing of the jury:)

Mr. Downing: My objection, your Honor, to this line of questioning is that I anticipate that examination that Mr. Callaghan is starting to pursue, revolves itself around the testimony of this man that a trial in Pontiac, Michigan, concerning the charge of assault and an attempt to commit murder of one, James Mundo, in which this man was shot in November of 1950.

Now, it seems to me that my understanding is if he opens this door up and wants to try to in any way impeach this man's testimony, I have a right to go into this testimony and what the testimony that was given in connection with what event.

Now, he is opening the door, or seeking to open the door, to this transaction. I have not sought to bring in any of that in. I don't think it is material, but I think if the door is opened that we have a right to go ahead, and we will get into it.

The Court: Well, how far do you intend to go?

Mr. Callaghan: I don't intend to ask him about being shot or shot at or anything else.

The Court: What is it that you intend to ask? Do you have the pages of the transcript? Hand it up.

382 Mr. Callaghan: That one question I intended to ask him now—

The Court: Go ahead.

Mr. Walsh: Maybe we ought to discuss it out of the presence of the witness.

The Court: Probably that would be a good idea. Suppose you step into chambers.

(The following proceedings were had in chambers, out of the presence and hearing of the witness).

Mr. Callaghan: I just asked him whether or not he paid Swartz for this film and he said no, that he only delivered to him \$1,058 that he got from a sale he made to Mr. Ahee, and so on. I said, "Did you purchase this film?" and he said, "No, sir." Now I intend to ask him, "Did you testify on such and such a date in this trial," and so on:

"Q. You bought the film from whom?"

"A. From Al Swartz."

The Court: Is that as far as you intend to go into the transcript? I understand this is a transcript from a proceeding in a state court in Michigan concerning an assault case.

Mr. Callaghan: Yes, involving a shooting by a man named Mundo.

383 Mr. Downing: That's right, in which the man was found guilty and sentenced.

Mr. Callaghan: Now, at the time you say this, "No, I went with Mr. Swartz to get the film." That is in the record already. That I am not concerned with. This is Swartz' invitation.

The Court: This testimony here is not impeaching. That is on page 51 of the transcript. "I went with Mr. Swartz to get the film from Chicago."

Mr. Downing: I don't think this is impeaching either.

The Court: As to whether or not it is impeaching, he has testified here that he sold some of the film to one, Ahee.

Mr. Callaghan: That's right.

The Court: And that he gave the proceeds of that sale to Swartz, as I remember his testimony.

Mr. Callaghan: That's right.

Mr. Downing: That's right.

The Court: Then you asked him the further question as to whether or not he gave Swartz any other money at any time for any film.

Mr. Callaghan: For the purchase of this film.

The Court: And he said No.

Mr. Downing: That's right.

384 Mr. Callaghan: That's right.

The Court: Now, the only other testimony in this transcript that bears on that is this question:

"You bought the film from whom?"

"A. From Al Swartz."

Mr. Callaghan: That's right.

The Court: I don't think that is impeaching.

Mr. Callaghan: I do. He said he didn't buy it from anybody, that he had this film.

The Court: There we get into the legal definition as to what is buying, and he testified here as to the fact,—that is, I assume they are the facts—at least they are the testimony, what he testified are the facts—that he and Swartz brought the film back and that he subsequently sold some of it to Ahee and turned over the proceeds to Swartz in the sum of \$1,050, and he subsequently delivered two other cases at an agreed price, as I remember his testimony, of \$350, but that the price was not paid.

385 Mr. Callaghan: That is right.

Mr. Downing: That is right.

The Court: Now, I don't think this question and answer is impeaching, so I will let you make an offer of proof out of the hearing of the jury, and out of the hearing of the witness, to protect your point. His only answer here is, "From Al Schwartz" to the question, "You bought the film from whom?"

Mr. Downing: That's right.

The Court: Let's see what preceded this examination.

Let the record show that the Court is reading part of the transcript submitted by Mr. Callaghan, on page 49, preceding the question that you referred to, Mr. Callaghan, and the transcript gives the question, "Did you at any time steal any film?"

"Answer: No, sir."

Mr. Eckeles—who is he?

Mr. Callaghan: The attorney for Mr. Mundo.

The Court: Mr. Eckeles made an objection and the court said, "He was accused of possessing the film
386 in his store that was stolen."

"Q. Did you have any film in your possession at any time that you knew was stolen?"

There there was an objection by Eckeles which was sustained.

"Q. You say you have pleaded guilty to this?"

"A. Yes, sir.

"Q. You bought the film from whom?"

"A. From Al Schwartz."

Well, I would say the questions preceding the particular one that you referred to, Mr. Callaghan, make it all the less impeaching. Apparently what they are trying to bring out here in the examination of the witness was that he was dealing in stolen film, and apparently he was trying to protect himself from that charge, and trying to show how he got the film.

Now, the choice of the verb "you bought the film from whom" is the choice of the examiner, and not the witness. He answers, "From Al Schwartz." I suppose instead of using the verb "bought," if he had said "received," he would have given him the same answer.

387 I don't think that is impeaching, and I would be inclined to sustain the Government's objection.

Is there anything else? Do you want to make your offer of proof on this one now while it is in front of you, so that it is clear? I sustain the Government's objection to your asking him the impeaching question from this part of the transcript which is page 50 of the transcript.

Mr. Callaghan: I will offer to prove, if I were permitted to ask the witness whether or not in the trial of James Mundo at Pontiac, Michigan, during the month of April, 1951, he was asked the question: "You bought the film from whom?" and the witness thereupon answer, "From Al Schwartz"—

The Court: For the reasons indicated, the Government's objection is sustained.

Mr. Callaghan: Now, on page 54 and 55 we may want to get into this: The prosecutor, while he is on the stand, makes the statement, "I would like to show if the Court please, that this man never at any time had any guilty

388 knowledge of the crime to which he pleaded guilty, and what has been brought out is affecting his credibility, and, if he has pleaded guilty to a crime of which The People contend he was not guilty, and which definitely affects his credibility—"

Now, the prosecutor in his presence said that he pleaded guilty to a crime of which he was never guilty, and I want to ask him questions concerning that, and I want to ask him if he heard the prosecutor make the statement.

Mr. Downing: To which I would object.

Mr. Callaghan: While he was on the witness stand, if he heard it made.

The Court: I would sustain the Government's objection to your using this transcript for that purpose.

Mr. Walsh: If it please Your Honor, I would make the same attempt or the same offer on behalf of MacLeod with the further statement that I would like to say that Mr. Downing has now shown that this man pled guilty to the charge of possessing film knowing it to have been 389 stolen, and here was the statement made in his presence while he was under oath in a courtroom in which the prosecutor says, "The People will show that the man did not know that it was stolen, and we will clear him," or words that have been read.

The Court: Well, I sustain the Government's objection to that offer, also.

Mr. Walsh: My point is, if the prosecutor's point came from the witness Marshall—

The Court: Very well, the Government's objection is sustained.

The Court: Well, let your offer be noted.

Mr. Walsh: Further, I would like to call attention to a statement by the Court in the case as a result of all of this.

The Court: I read that. I think it is at the bottom of page 55.

Mr. Walsh: Yes, and that statement was made during the trial while the witness was on the stand.

390 "Let it stand. He pleaded guilty to having stolen property in his possession. He was guilty of possessing stolen property. He was not guilty of knowing it was stolen property at the time."

The Court: This is a Judge of the state court in Michigan.

Mr. Walsh: That's right.

The Court: Who was relieving the Federal Court of its responsibility of determining whether or not it was stolen?

Let it be stipulated and agreed in the presence of the Court that Mr. Callaghan would ask the questions indicated in his offer of proof if I had permitted him to, when he re-enters the court room, to which question you would object?

Mr. Downing: I would object.

The Court: And which objection I will sustain, and the record will show with reference to both defendants—

Mr. Walsh: That's right.

The Court: —that the questions were asked after the offer of proof is made, the Government is to make no point that such question was not asked after the offer of proof was made.

Mr. Downing: That is understood, too, your Honor.

391 The Court: Bring in the jury.

(Proceedings resumed in the court room in the presence and hearing of the jury).

The Court: You may proceed, Mr. Callaghan.

By Mr. Callaghan:

Q. Did you give Swartz any money other than the \$1050 about which you testified?

A. I don't remember, it has been quite a while. I believe that is the only amount.

Q. Well, you would remember, Mr. Witness, would you not, if you had paid Mr. Swartz in addition to the \$1050?

A. No, sir, it has been over a year ago.

Q. Your memory isn't good about all these events?

A. I beg your pardon?

Q. Your memory isn't good about all these events?

A. Yes, sir, certain events. The money, I believe—

Q. Sir?

A. The one amount I remember is \$1050.

Q. The one you remember is \$1050?

A. Yes, sir.

Q. How frequently did you see Swartz between July 20th and July 27th?

A. I seen him Thursday, and I seen him Saturday. I seen him Monday, and I believe I seen him Wednesday.
392 and Thursday.

Q. Did Swartz ever give you anything for the money he got from Dr. Flick?

A. No, sir.

Q. Did Swartz ever give you any money between July 20 and July 27?

A. No, sir, except for the car expenses.

Q. Well, did you just go to Chicago for the ride?

A. No, I went down to Chicago to go to the Revere Camera Company.

Q. That was the second occasion. The third occasion you went to the Revere Camera Company?

A. The first time I went down to go to Revere Camera Company.

Q. Did you come with Swartz on July 20th, just for the ride?

A. No, sir, I came to go to the Revere Camera Company to pick up some cameras.

Q. And that was after you went to the Revere Camera Company that you went to the Adams Street store?

A. No, sir, we got here—we didn't go to the Revere Camera Company. We went to the Liberal Loan Bank first.

Q. By the way, where did you see the name "Liberal Loan Bank?"

393 A. It is either on a window or on the outside of the store.

Q. You are sure you saw that some place, the "Liberal Loan Bank?"

A. Yes, sir. In fact, I have one of the cards at home. Mr. Callaghan: Well, I move that be stricken as a voluntary response of the witness.

The Court: The motion is denied.

By Mr. Callaghan:

Q. Do you have any card in your possession now showing "Liberal Loan Bank" on it?

A. Not in my possession now. I have it in my store.

Q. Did you see the words, "Liberal Loan Bank" on the wall inside?

A. I don't think so.

Q. Who else was present in that store when you went in there on that occasion?

A. There was a white-haired fellow, a salesman.

394 Q. And who else?

A. At that time; that was the first time?

Q. July 20th.

A. That was the only one I remember.

Q. A white haired man who was behind the counter?

A. Yes, sir.

Q. You, Schwartz, and Mr. Gordon—

A. And also the watch salesman.

Q. And a watch salesman?

A. Yes.

Q. And nobody else?

A. I believe there was someone that came in and out while I was there, but I don't remember.

Q. Some customers?

A. Yes, sir.

Q. Now, you sat outside in the store?

A. There is a little chair outside. I sat out there and read the paper.

Q. And Schwartz went into the back room?

A. Yes, sir.

Q. Did the white haired man go back in the back room?

A. No, sir.

Q. Who was in the back room at that time?

A. Mr. Gordon and Mr. Schwartz.

395 Q. Just the two of them?

A. Yes, sir.

Q. Did you go into the back room at all?

A. No, sir—yes, sir, I change that. I did go in the back room.

Q. On the first occasion?

A. Yes, sir.

Q. Now, will you describe that back room to us?

A. All I remember is that I went in the back room to make a telephone call to my aunt.

Q. How big was the back room?

A. About ten feet by fifteen, and it leads into another little room.

Q. Ten feet by fifteen feet. Would you say it was the distance from you to me?

A. Yes, sir.

Q. In one direction, and that would be the ten foot dimension?

A. Yes, sir. And from here down to—

Q. From where I am standing now to where you are standing now for the fifteen foot dimension?

A. It might be just a trifle larger.

Q. A trifle larger than that. Maybe 18 feet by 10 feet?

396 A. Yes, sir.

Q. A distance of where I am standing now to where you are sitting?

A. Yes, sir.

Q. And how is it furnished?

A. I didn't pay much attention. All I remember is that there were desks there.

Q. Did you notice anything else about it at all?

A. No, sir.

Q. Did you notice whether there was a vault back there?

A. No, sir, I didn't pay any attention.

Q. How big was the front or sales room of this jewelry store compared with the back room?

A. The sales space was not too large. I would say about 18 by 18.

Q. 18 by 18?

A. Yes.

Q. Eight feet wide, or eight feet in one dimension larger than the back room?

A. Yes, sir.

Q. You said the back room was 10 by 18?

A. Well, about 15 by 15. It was a little bit—not quite as large as the back room.

397. Q. Where was the cashier's cage in this store, if you noticed, or did you notice the cashier's cage?

A. I believe there was one as you go in, kitty-corner from the door going in.

Q. As you come in the door, directly in front of you?

A. Well, this was counters, counters going around, and I believe the cashier's cage was over there, and there was another counter.

Q. Was that the first time you had ever seen the defendant Gordon?

A. Yes, sir.

Q. Now, were you introduced to him before Schwartz went in the back room, or before he went in the back room?

A. Afterwards.

Q. And as Schwartz went into the back room and was there for several moments and then came out—

A. Yes, sir.

Q. Then for the first time you were introduced to the defendant Gordon?

A. Yes, sir.

Q. Were you introduced to the white haired man?

A. No, sir.

Q. Did you speak to him?

398. A. Yes, sir.

Q. What did you say to him?

A. I don't remember.

Q. Sir?

A. I don't remember, it was—

2

Q. What did you say to Gordon on that occasion?

A. It was just an introduction.

Q. Just "How do you do"?

A. Yes, sir.

Q. And you acknowledged the introduction, and that is all?

A. Yes, sir.

Q. Then you left the store?

A. Yes, sir.

Q. Now, your car was parked in a parking garage?

A. Yes, sir.

Q. Near that store?

A. Next door.

Q. Who went to your car with you?

A. Mr. Schwartz.

Q. And who else?

A. And Mr. Gordon came out afterwards, after I got my ticket.

Q. Did Gordon get in the car with you?

399 A. Yes, sir.

Q. And the three of you then drove away in that car?

A. Yes, sir.

Q. Now, when you got up to this garage that you said you had to go to, did you pull through an alley to get to that garage?

A. Yes, sir.

Q. And you were driving all the time?

A. Yes, sir.

Q. And where did Gordon sit?

A. Gordon got in his car, and I followed him.

Q. Gordon didn't ride with you?

A. He rode with me to his car.

Q. Where did you go to get his car?

A. I don't remember the exact street.

Q. How far from this Adams Street store?

A. Oh, about ten blocks.

Q. Which direction? Do you know your directions in Chicago?

A. North.

Q. And Gordon's car was parked there in a garage, or in a parking lot—which?

A. Well, it was parked on a side street.

Q. At a curb?

400 A. Yes, sir.

Q. On a street?

A. Yes, sir.

Q. And then Gordon got out of your car and at a point—

A. Yes, sir.

Q. And you followed him from there?

A. Yes, sir.

Q. To an alley where you turned in an alley and went to a garage?

A. That's right.

Q. When you got to this garage, it was Schwartz, wasn't it, who selected the film that was to go in the car?

A. Yes, sir.

Q. And Schwartz directed you to a certain film?

A. No, they had it piled up, and I just loaded it into the car.

Q. Schwartz told you what he wanted loaded?

A. Well, Mr. Gordon and Mr. Schwartz already had the film piled into a pile.

Q. Mr. Witness, you said in your direct examination, "When we got to the garage, and when we got there you took a number of boxes and piled them up and put it in the car.

A. He had it piled up and told me to put it in the 401 car.

Q. He had it piled up and told you to put it in the car?

A. Yes, sir.

Q. Did anyone assist you in putting it in the car?

A. I thought it was Mr. MacLeod.

Q. You are not sure about that?

A. No, sir.

Q. But some other person and you put the rolls of film into your car that Schwartz designated for you to put in the car?

A. Yes, sir.

Q. Do you know how many cartons or boxes you put into the car at that time?

A. It was eleven cartons of the magazine film, ten cartons of roll film, and thirteen cartons of the 116 millimeter film.

Q. That is a total of how many cartons?

A. 34.

Q. Were they placed in the trunk, or the back of the car?

A. Both.

Q. Now, how long did you remain in Chicago that day?

A. We left and went back to Detroit—I believe we left around 4:30 or 5:30.

Q. You left Chicago at 4:30 or 5:30?

A. Yes, sir.

Q. It was well on to 1:30 or 2 o'clock in the morning when you got to Detroit?

A. Yes, sir.

Q. You went first to Schwartz's home at Sturdivant Avenue?

A. Yes, sir, we stopped and had dinner.

Q. How much of the film did you take off at Schwartz's house?

A. Mr. Schwartz, I believe, took one case each.

Q. One case of each of the three different kinds?

A. Of each of the three different kinds.

Q. That you have described?

A. That's right.

Q. Did he give you any money for it?

A. No, sir.

Q. And you took the rest of the cases then and drove to Ferndale?

A. Yes, sir.

Q. And you took them down to your store?

A. Yes, sir.

Q. And you put them in your basement at 2 o'clock in the morning?

A. Yes, sir—oh, no, no, sir. I didn't take them out. I went first, and went to sleep.

Q. Where did you live in Detroit?

A. 200 Pilgrim, in Highland Park.

Q. You drove to 200 Pilgrim in Highland Park and left the merchandise in your automobile, if I understand you correctly?

A. That's right.

Q. When was it you took it to your store?

A. The next morning.

Q. When did you make the sale to Ahee?

A. Friday.

Q. The Friday following this trip to Chicago?

A. Yes, sir.

Q. And the merchandise you sold to Mr. Ahee was merchandise from this first trip?

A. Yes, sir.

Q. How many cases did you sell to Ahee?

A. I sold him one case of the 116, and I believe it was nine or ten cases of the roll, and I am not sure about the magazine.

Q. You are not sure of what else you may have sold him?

A. No, sir.

404 Q. Was that the occasion on which you say he gave you \$1,050?

A. Yes, sir.

Q. In cash?

A. Mr. Ahee had a check, and asked me to cash it, and I couldn't cash it. I believe it was for \$1,800.

Q. But he paid you in cash?

A. Yes, sir.

Q. Did you ask that he pay you in cash?

A. No, sir.

Q. Now, prior to your entering a plea of guilty in Detroit, you had a conversation with Mr. Scheer of the FBI, didn't you?

A. Yes, sir, the 28th when I was picked up—

Q. Keep your voice up.

A. I talked to Mr. Scheer of the FBI on the 28th, the day I was picked up.

405 Q. Where did Mr. Scheer first see you?

Mr. Downing: I object, unless he knows when he first saw him. Obviously Mr. Scheer is the best witness as to where he first saw Mr. Marshall. As to where Mr. Marshall first saw Mr. Scheer, that is another question and to that I do not have any objection.

The Court: That is what he intended, I think.

Mr. Callaghan: I think we understand each other. We are all talking about the same day.

By Mr. Callaghan:

Q. Where was it Scheer first saw you or you first saw Scheer on the occasion he came to see you about something?

A. On Woodward Avenue in Detroit.

Q. In your store?

A. No, sir.

Q. Where?

A. On Woodward Avenue.

Q. What is on Woodward Avenue?

A. I had a car parked on Woodward Avenue.

Q. Mr. Scheer came over to your car?

A. Yes, sir, and asked me what I had in my car in the back.

406 Q. And then did he take you to the office of the FBI?

A. I am not sure whether he took me downtown first or whether he took me out to the store.

Q. By downtown do you mean to the police department?

A. The Post Office, Federal Building, Detroit.

Q. And did he sit you down there and question you?

A. He asked me where I got the film.

Q. Did you make a statement at that time?

A. Yes, sir.

Q. In writing?

A. Yes, sir.

Mr. Callaghan: Do you have that statement, Mr. Downing?

Mr. Downing: I don't have it in court, no.

By Mr. Callaghan:

Q. How long did he question you?

A. About an hour.

Q. Was any other Agent present at the time that he questioned you?

A. Yes; sir.

Q. Who else was present?

A. I am not sure. I believe it was Mr. Shirley.

Q. Shirley?

A. Yes, sir. I wouldn't say for sure. I am not
407 positive.

Q. Did you after you had been questioned for an hour or an hour and a half sign a statement then for them?

A. I believe I did.

Q. Was it in question-and-answer form or was it in a narrative form?

A. Narrative form.

Mr. Callaghan: Does the Government have that statement? I am asking now for its production.

Mr. Downing: If your Honor please, first of all I think it is immaterial as to whether we have the statement. There is not anything on direct examination—

By The Court: What is before me? Is anyone asking me for anything?

Mr. Callaghan: I am asking that the court compel the Government to produce that statement.

The Court: Your motion is denied.

Mr. Walsh: Or a copy of it if he has it.

The Court: You have to make a request so I can rule on it. You make yours. What do you want?

Mr. Walsh: Defendant MacLeod requests an examination of that statement about which the witness has testified. 408

The Court: That request is likewise denied.

IN THE UNITED STATES DISTRICT COURT

(Caption—No. 50 CR 641)

Before Judge Campbell and a Jury,

Friday, June 1, 1951,

10:00 o'clock, a.m.

Court met pursuant to adjournment.

411 (Whereupon the following proceedings were had in chambers out of the presence and hearing of the jury:)

Mr. Callaghan: If your Honor please, yesterday there came into the testimony reference to a visit this witness made to Chicago on July 22nd.

No offense is charged in this indictment as of July 22. It got in very swiftly. He covered the July 22 incident in about two pages, and no objection was made to it, I state frankly, at the time it came in.

But I now move to strike that evidence having to do with the offense or the matter about which he testified on July 22, on the ground that it is not charge in the indictment and is not material to the questions that are involved in this lawsuit. We are concerned here with what happened on July 20, being counts 1 and 2 in the indictment, and July 27, as charged in counts 3 and 4. July 22 is an offense not charged:

The Court: In other words, there are two trips charged in the indictment and you, Mr. Downing, introduced evidence of a third?

Mr. Downing: Yes, in accordance with the law of the Seventh Circuit, where crimes of similar type may be shown as to the question of intent.

The Court: Very well. The motion is denied.

412 Mr. Callaghan: Will your Honor, in view of that ruling, now charge the jury that they are not to consider the matter having to do with the occurrence on July 22 as proof of a substantive offense as charged in the indictment, that they are to consider that evidence with respect to July 22 solely on the question of motive or intent, that it must be considered by the jury for no other purpose.

The Court: I think I will consider that if you will submit an appropriate instruction at the time I instruct the jury generally, I will give it consideration at that time. I

will not instruct them at this time, but I direct you to prepare such an instruction and submit it with your other instructions at the time all the instructions are submitted.

Mr. Callaghan: I think that point—

The Court: As the time I also have to instruct—

Mr. Callaghan: That point is terribly important to Mr. Walsh's client because he was not even concerned with this July 22 incident.

The Court: I did give an instruction yesterday as to his client with reference to anything that occurred out of his presence. I gave that instruction twice yesterday, and I will give it again in the general instructions at the end of the case. I directed Mr. Wash to be sure to remind me at that time, and to submit an appropriate instruction, and you are again so directed and you will also submit one, Mr. Callaghan.

Mr. Callaghan: Yes.

The Court: Did you have something else, Mr. Walsh?

Mr. Walsh: No, sir.

(Whereupon the following proceedings were had in open court, in the presence and hearing of the jury:)

The Court: Let the witness take the stand.

JAMES I. MARSHALL, a witness heretofore called on behalf of the Government, and having been heretofore first duly sworn, resumed the stand and further testified as follows:

Cross Examination (Ctd.)

By Mr. Callaghan:

Q. You are the same James Marshall who was testifying at the adjournment yesterday?

A. Yes, sir.

Q. Mr. Marshall, how many statements did you make to the FBI after your detention on July 28?

Mr. Downing: If your Honor please, I object. I think that is immaterial. This man is not a defendant.

414 The Court: Yes. Unless there is some special reason for it, I don't think there is any necessity for it.

Mr. Callaghan: I first want to find out how many statements he made, and then I propose to ask him certain questions concerning those statements.

The Court: The objection is sustained.

By Mr. Callaghan:

Q. After you made your first statement on July 22 when were you next brought into the office of the FBI?

A. I don't remember right now.

Q. How long after July 28 was it before you were again brought in to the FBI?

A. I believe August 25th when I gave the material to the—

Q. Speak up.

A. I believe it was August 25.

Q. Was that after your plea in Detroit or before?

A. After.

Q. You appeared before Judge Levin in Detroit on or about August 14, did you not; and at that time entered a plea of guilty?

A. Yes, sir.

415 Q. Did I say August 14th? I mean August 18th.

A. I wasn't sure of the date.

Q. You appeared there with your counsel, Mr. Schwartz?

A. Yes, sir.

Q. And the Government was represented by Mr. Kenneth Smith?

A. Yes, sir.

Q. Was Mr. Scheer present?

Mr. Downing: Objection, your Honor. It is immaterial whether Mr. Scheer or anybody else was present.

The Court: What is it you want to bring out?

Mr. Callaghan: I propose to show out of this witness the hope and promise of immunity and all of those things that are connected with it.

The Court: You may ask him a question, if he was promised any. I sustain objection to this question.

By Mr. Callaghan:

Q. Prior to going into that court room had Mr. Scheer promised you any immunity for your testimony which you were to give in any later proceedings in this matter?

A. No, there was never any promise.

Q. Had Mr. Schwartz communicated to you any 416 promise that had been given him by Mr. Scheer or by the United States Attorney in Detroit?

A. There was no promise.

Q. Do you know whether Mr. Smith made any promises to your counsel?

A. Not that I know of.

Q. Did Mr. Schwartz communicate any such promise to you?

A. No, he did not.

Q. Do you hope by your testimony here to get off easy in your case in Detroit?

A. No, sir.

Q. You have no hope of that at all?

A. No, sir.

Q. And you are not just trying to do the best for yourself here on the witness stand, are you?

A. No, sir.

Q. At the time you entered your plea of guilty in Detroit, were you advised in open court at that time that your counsel and Mr. Smith had been in chambers and discussed the disposition of your case with the judge?

Mr. Downing: If your Honor please, I think that is immaterial.

417) Mr. Callaghan: I will prove it.

Mr. Downing: Just a minute, your Honor.

Mr. Callaghan: Now, your Honor—

The Court: Finish your objection.

Mr. Downing: It is immaterial. This man cannot be held responsible for anything that may have transpired between a judge in the Federal District Court in Detroit and Mr. Smith, not in this man's presence, and it is immaterial.

Mr. Callaghan: I propose to show that at the time he entered his plea of guilty in the court in Detroit there was considerable—

Mr. Callaghan: I object unless this is outside the presence of the jury.

The Court: Yes. The jury will step out, please.

(Whereupon the following proceedings were had out of the presence and hearing of the jury:)

The Court: What is it you propose to show?

Mr. Callaghan: I propose to show, if your Honor please—I would like to have the witness excluded from the court room.

The Court: The witness will step out.

(Whereupon the following proceedings were had out of the presence and hearing of the witness:)

418 Mr. Callaghan: I propose to show that on August 18th in the District Court of the United States for the Eastern District of Michigan, before the Honorable Theodore Levin, District Judge, this defendant appeared and at that time waived the filing of an indictment or the return of an indictment, and signed a document consenting to being charged by information, that the court at that time explained to him the nature of the proceeding, that he could insist upon the return of an indictment, but that he waived

examination and return of an indictment, consenting to acceptance of prosecution by information; that at that time he entered a plea of guilty, but insisted to the court over that plea that he still was not guilty. He was then asked by the court whether anyone had promised him anything, to which he responded, "No," that he had not been forced to plead guilty. That thereupon in open court the District Judge said to this defendant—and I say this is the basis for part of his motive for testifying:

419. "The Court: Very well, the plea of guilty is accepted. Now, I am going to refer your case to the Probation Department for presentence report. I think I should say to you, as I said to your lawyer yesterday when he and Mr. Smith called upon me in chambers yesterday morning, that it seemed to me that if you intended to plead guilty and expected a recommendation for a lenient sentence or for probation from the Probation Department, that it would be essential that you satisfy the Probation Department that you have given the law enforcement authorities all the information concerning the merchandise involved in this proceeding."

The sword of Damocles is now being held over his head, and I want to show that.

Mr. Downing: I object to that.

Mr. Callaghan:

"As I understand it, there was a tremendous amount of film involved,"

and so on.

420 "and it is very important for the law enforcement authorities to apprehend all of those who participated in this rather large theft from the interstate commerce shipment.

"I am not holding out any promises to you, but I think you would be well advised to tell the probation authorities the whole story even though it might involve others.

"The Defendant: Yes, sir. I told Mr. Sherry everything I knew, and I tried to be very cooperative."

"The Court: The bond is \$2500 which has been furnished, and it may be continued."

I want to show that is what happened in that court that morning.

Mr. Downing: First of all, I do not think what this judge said to this man in any way is material to this matter here. He is not responsible for what the judge voluntarily suggests to him or in any way tells him to do. Obviously, he was not present at the session which is referred to in the chambers of the court. He cannot be held responsible for that. If the judge says this, this and this, 421 I don't think this man is in any way affected by what the judge tells him to do. I think it is immaterial here. This man is not a defendant.

422 Mr. Walsh: May I be heard briefly?

The Court: Yes, surely.

Mr. Walsh: It appears to me that Mr. Downing approaches this as a question of responsibility on the part of the witness. I don't think it is important at all. The question is the motive the witness has in testifying, and what may be going through his mind as he testifies, and the jury is entitled to know it, as well as the Court is entitled to know it. The question is whether or not this man has a motive that is prejudicial to these persons. The jury is to judge that. If he is hoping for a reward, we are entitled to know that.

The Court: I permitted Mr. Callaghan to ask him several questions on that, even to the one question which might have been objectionable, the last one, if he is here without hoping for anything himself. All of those questions directed to this witness I permitted Mr. Callaghan to ask. This further colloquy between counsel and the Court in Detroit, I think, is thoroughly immaterial, and I sustain the objection.

Mr. Callaghan: Judge, I propose to ask the witness a direct question as to whether or not he was told by the District Judge that if he expected any leniency in this proceeding, he better cooperate with the law enforcement 423 authorities.

The Court: I would sustain the objection to that.

Mr. Callaghan: May I ask the question in the presence and hearing of the jury?

The Court: I will permit the record to show that you are asking the question and the Government will not be permitted to make a point of the fact that no—

Mr. Callaghan: Your Honor forbids me now to ask that question in the presence of the jury?

The Court: I do, and I have sustained the Government's objection.

Mr. Walsh: I think Mr. Callaghan understands that he is to ask the question.

Mr. Callaghan: No, no.

The Court: He is not to ask the question. He is forbidden. The same applies to you, if there are any doubts in his mind. You are joining in this motion?

Mr. Walsh: Yes.

The Court: Qui facit per alium, et cetera.

Bring in the witness, and bring in the jury.

(Proceedings resumed in the presence and hearing of the jury.)

The Court: You may proceed.

By Mr. Callaghan:

424 Q. When did you last discuss your testimony with Mr. Downing, the prosecutor in this case?

A. I believe it was about a week or ten days ago.

Q. You didn't discuss it with him yesterday at all?

A. No, sir. There might have been one or two things I might have discussed.

Q. "Yes, sir, no, sir, might have been one or two things"—now, which is it?

A. The entire testimony, no, sir.

Q. How long were you with Mr. Downing yesterday before you took the witness stand?

A. Three or four minutes.

Q. Where?

A. In Mr. Downing's office.

Q. What time of day was it?

A. I believe it was around 11 o'clock.

Q. 11 o'clock yesterday morning?

A. I believe it was.

Q. Who else was present?

A. Mr. Scheer.

Q. Mr. Scheer from the FBI in Detroit?

A. Yes, sir.

Q. Who else?

A. I don't know his name. (indicating).

Mr. Downing: He is referring to Mr. Pringle.

425 By Mr. Callaghan:

Q. Mr. Pringle of the United States Marshal's office?

A. Yes, sir.

Q. And who else?

A. And two other men.

Q. Do you see those two other men in the court room?

A. Yes, sir, there is one there (indicating).

Q. One man there. Which man do you indicate?

A. The fellow with the light brown suit.

Mr. Callaghan: This gentleman, what is your name?

Mr. Downing: He is indicating Mr. Boyajin.

By Mr. Callaghan:

Q. He is an agent of the Federal Bureau of Investigation, is he?

A. I don't know.

Mr. Downing: I will stipulate that he is.

Mr. Callaghan: May the record show that he is an agent of the Federal Bureau of Investigation?

Mr. Downing: Sure.

By Mr. Callaghan:

Q. And who else?

A. One other gentleman. He is not here.

Q. That you do not see in the court room?

426 A. Yes, sir.

Q. Was Mr. Mehegan present?

A. I don't know. He came in, but I don't know whether he was there during the—

Q. What do you mean by that, "He came in, but I don't know if he was there"?

A. I was in the room for an hour.

Q. You were not there 3 or 4 minutes?

A. I was there for an hour.

Q. Was Mr. McCormick with you there?

A. Mr. McCormick came in and went out.

Q. How long was Mr. McCormick there?

A. 5 or 10 minutes.

Q. Now, have you named all of the people who were there?

A. To the best of my ability.

Q. Now, when you left this court room yesterday, you again went to the United States Attorney's office, didn't you?

A. No, sir.

Q. Were you in the United States Attorney's office at all last evening after you left this witness stand?

A. No, sir.

Q. Were you there this morning?

427 A. Yes, sir.

Q. Did you see Mr. Downing this morning?

A. Yes, sir.

Q. Did you talk to Mr. Downing this morning?

A. Yes, sir.

Q. Were all of those same men present when you again talked to Mr. Downing?

A. No, sir.

Q. Did you say "No, sir" or "Yes, sir"?

A. No, sir.

Q. How many persons were present when you talked to Mr. Downing this morning?

A. There was one other man—I believe there was 2 FBI men and one other man from the county, or—

Mr. Downing: The United States Marshal's office.

The Witness: The United States Marshal's office.

By Mr. Callaghan:

Q. Did you discuss the testimony you had given yesterday?

A. No, sir.

Q. Did you discuss the testimony that you might give today?

A. No, sir.

428 Q. Did you discuss then the questions that might be asked you and the answers you might make to those questions?

A. No, sir.

Q. You weren't told to anticipate any questions on cross examination then by Mr. Downing or anybody else?

A. There might have been one or two questions.

Q. What were the one or two questions, do your remember?

A. I don't know. Mr. Downing told me just to say what I knew.

Q. What were the one or two questions you discussed?

A. Oh, there was one with regard to the amount of money that was transacted and I said I didn't remember.

Q. What else did he ask you about?

A. And the other was something in connection with Mr. Swartz being killed.

Q. And what else did he talk to you about?

A. That was all, I believe.

Q. Now, how long were you in Mr. Downing's office?

A. 10 or 15 minutes.

Q. And just those two questions or two matters were talked about in the 10 or 15 minutes?

A. Yes, sir.

Q. Now, did Mr. Downing tell you that if you testified favorably in this case that he would suggest to the Probation Department in Detroit, Michigan that you would receive favorable consideration?

A. No, sir.

Q. Did anybody in the United States Attorney's office in Chicago make that suggestion to you?

A. I said previously that had no connection.

Q. Just answer my question.

A. No, sir.

Q. Did Mr. Mehegan or Mr. McCormick say anything like that to you?

A. No, sir.

Q. And you have no hope of immunity or reward for the testimony you are now giving in this court room?

A. No, sir.

Q. Did any person whomsoever suggest to you that if you cooperated with the authorities in this case and testified against others, you would receive consideration?

Mr. Downing: I object, your Honor. This has been gone into before.

The Court: He may answer.

By The Witness:

A. No, sir, my lawyer told me not to testify.

430 Mr. Callaghan: I move that the last part be stricken, as to what his lawyer told him. We are not concerned with that, and it would not be admissible under any circumstances, and it is purely a voluntary response of the witness.

The Court: The motion is denied.

By Mr. Callaghan:

Q. Your lawyer, Mr. Schwartz, told you not to testify?

A. Yes, sir.

Q. Now, did you tell the District Judge in Detroit, after you entered your plea of guilty, that you were not guilty?

A. I told him I was not guilty of receiving stolen property with the knowledge it was stolen.

Q. You didn't transport any film to Detroit with the belief that film was stolen, did you?

A. No, sir.

Q. Now, in the first statement you made to Mr. Scheer, you didn't name Kenneth Gordon, did you?

A. No, sir.

Q. And you didn't name Mr. MacLeod in that statement, did you?

A. I don't believe so.

431 Mr. Callaghan: Now, I ask again for the production of that statement, if your Honor please.

The Court: The motion is denied.

By Mr. Callaghan:

Q. That statement that you made in Detroit to Mr. Scheer when you were arrested in August or July of 1950, was wholly inconsistent with your testimony given in this lawsuit, wasn't it?

A. I—

Q. Just answer that Yes or No, if you can?

A. No, sir.

Q. It was not inconsistent?

A. It was consistent.

Q. It was consistent with the testimony you have given here?

A. Yes.

Q. But you didn't name Gordon, and you didn't name MacLeod? Did you?

A. There wasn't anybody—

Q. Wait a minute. You didn't name Gordon, and you didn't name MacLeod, did you?

A. No, sir.

Q. Now, how long after this first statement you made in July, was it before you ever mentioned the name of Gordon or MacLeod to anybody?

432 A. August 25th.

Q. August 25 of 1950? That is a month and a week after?

A. Yes, sir.

Q. And that was after you had entered your plea in Detroit, wasn't it?

Q. Now, you said on your first statement, Mr. Witness, didn't you, that you got this film from Mr. Swartz?

A. Yes, sir.

Q. You said in your first statement that you purchased it from Swartz, didn't you?

A. Mr. Swartz did all the buying.

Q. Wait a minute. You said in your first statement that you purchased it from Swartz, didn't you?

A. I don't remember.

Q. That was rather an important event in your life, wasn't it, the making of that statement?

Mr. Downing: I object to the observation.

The Court: Sustained.

Mr. Callaghan: Wasn't it, I said.

Mr. Downing: Objection.

The Court: The objection is sustained.

433 By Mr. Callaghan:

Q. Well, was it an every day occurrence for you to make statements to the FBI?

A. After July 28th.

Q. After July 28th it was an every day occurrence?

A. Well, I mean I made quite a few statements.

Q. How many statement did you make?

A. I don't remember exactly.

Q. Ten?

A. No, sir.

Q. Fewer than ten, or more than ten?

A. Fewer.

Q. How many fewer?

A. Four or five, six.

Q. Four or five fewer, or you made four or five statements?

A. Four or five statements.

Q. And you signed each one of those statements, didn't you?

A. Yes, sir.

Q. And each one of those statements varied, didn't it?

A. Slightly.

Q. Each time you told the story you added something to it?

A. There was something I remembered.

434 Q. Each time you added something to the statement?

A. I said there was something I remembered.

Q. Mr. Witness, each time you made the statement you added something to it?

Mr. Downing: I object, because the question has been asked twice and—

The Court: What do you want to observe, Mr. Callaghan?

Mr. Callaghan: I want to observe that I want a Yes or No answer to that question.

The Court: The question has been answered. The objection is sustained.

By Mr. Callaghan:

Q. Did you sign all of those statements?

Mr. Downing: Objection. This is repetition.

The Court: Sustained.

By Mr. Callaghan:

Q. To whom did you give the statement?

A. To the FBI.

Q. To Mr. Scheer, or Mr. Sherley?

A. Yes, one of the two.

Mr. Callaghan: I ask for the production of these statements, each one of which the witness says varied in some particular.

435 The Court: The motion is denied.

Mr. Walsh: The defendant MacLeod asks for an inspection of the statements too.

The Court: Likewise denied.

By Mr. Callaghan:

Q. Between July 18 and August 25, you made five statements in writing, and signed each one, is that right?

A. I told you, I believe so.

Q. I didn't hear you?

A. I believe so.

Q. And it wasn't until August 25 that you ever mentioned the name of Gordon or MacLeod?

A. That is correct.

Q. Now, the only person involved in this entire proceeding to whom you ever gave any money was Swartz, is that so?

A. That's right.

Q. How much did you make out of it?

A. I didn't make anything.

Q. How much did you hope to make out of it?

A. Three or four hundred dollars.

Q. You were selling it on consignment basis, were you?

A. Yes, sir.

436 Q. Now, you didn't put up a quarter for this merchandise with Mr. Swartz?

A. I gave Mr. Swartz some money, but I don't remember the amount.

Q. How much did you give Mr. Swartz in addition to the \$1050 that you gave him when you sold the film to Mr. Ahee?

A. I don't remember.

Q. Well, was it several hundred dollars, or was it \$40?

A. I don't remember.

Q. You can't remember now whether it was several hundred or \$40?

A. No, sir.

Q. Or \$10?

A. I told you I don't remember.

Q. Sir.

A. I do not remember.

Q. When did you give that money to Swartz?

A. I still don't remember.

Q. How much did you have in your pocket when you came to Chicago on July 20th?

Mr. Downing: Objection, your Honor. That is immaterial, how much he had in his pocket on July 20th.

437 The Court: He may answer, if he remembers.

By The Witness:

A. I had about \$600 or \$700, I believe.

By Mr. Callaghan:

Q. \$600 or \$700?

A. Yes.

Q. Did you give that to Swartz?

A. I don't believe so. I might have given him around \$300.

Q. Your memory is better about it now?

A. No, sir.

Q. Than it was a minute or two ago?

A. No, sir.

Q. How much did you have in your pocket when you came to Chicago on July 27th?

A. I had about \$30.

Q. Did you give any of that to Swartz?

A. No, sir, I paid for the expenses.

Q. Now, you were to make some additional moneys out of it when you sold the merchandise? You were to turn the money over to Swartz, as you sold it?

A. Yes.

Q. And you were to get from Swartz some of the proceeds?

A. Yes, sir, we were splitting the profits.

438 Q. Now, when you made this sale to Mr. Ahee, did you tell him it was your merchandise?

A. I didn't. There was no mention of it being my merchandise.

Q. Did you call Mr. Ahee, or did he call you?

A. I believe I met Mr. Ahee downtown.

Q. Do I say it wrong? Is it "Ayhee" rather than "Ahee"?

A. Yes, sir.

Q. You met Mr. Ahee downtown?

A. Yes, sir.

Q. What did you say to him?

A. I asked him if he could use any film. He asked me for the price and I gave him the price.

Q. Did he ask you where you got it?

A. No, sir.

Q. Did you tell him where you got it?

A. No, sir.

Q. Did you tell him you were selling it to him at a bargain price?

A. He knew it was a bargain price.

Q. Did you tell him that it was Swartz merchandise?

A. No, sir.

Q. Did you give him a bill of sale when you sold it to him?

439 A. No, sir.

Q. Prior to July 20th of 1950, had you ever done any business with Mr. Swartz?

A. Yes, sir.

Q. What kind of business had you done with Mr. Swartz?

A. I had gotten things off of Mr. Swartz. I have a charge account with Mr. Swartz.

Q. What had you bought with Mr. Swartz prior to July 20th?

Mr. Downing: Objection. That is immaterial and has nothing to do with the relevancy of this lawsuit.

The Court: Sustained.

By Mr. Callaghan:

Q. On how many occasions had you had business transactions with Mr. Swartz?